

## **Trials of a lawyer. Autobiography by James Manahan**

James Manahan 1914

TRIALS OF A LAWYER

LC

AUTOBIOGRAPHY by JAMES MANAHAN

[1933]

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**FOREWORD**

F. B. M. 1934-7-25

*Shortly before my father's death, he completed this autobiography. It was my privilege to assist in its preparation and it is now my pleasure to print this volume in honor of his many friends, as well as in defense of his undying principles .*

*May it be dedicated to the lovers of his causes .*

Kathryn Manahan .

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### CHAPTER I AWAKENING

#### [ 1 ]

I WAS born in '66 and woke up in '96 of the 19th Century. During the thirty intervening years I dreamed. My dreams, bordering on the void of infancy, must have reflected protest against an adverse environment. In the morning of the day on which I was born, I was not expected for some time. My father, therefore, without compunction, left mother and drove to Chatfield with some wheat for a grist of flour. He was hardly out of sight down the lane when she felt labor pains and realized that her hour had come.

Doctors at childbirth were not expected by the pioneer women of Minnesota and midwives were unknown. The custom was to call in an ever-willing neighbor.

Mother sent Christopher, her first born, then eight years of age, to tell Margaret Tuohy, across the hill, to come at once. It was quite a trip for a little boy in mid-March, with snow blustering thru the willows and when no answer came and he did not return within what seemed to her a reasonable time, she grew distracted, repeating over and over to herself, “Christopher is lost, Christopher is lost.” Again and again, she went 10 into an unheated spare room to look thru the window overlooking the path up the hill; it seemed to be growing dark as she peered anxiously until finally in her agony and anxiety she fell down upon the floor in front of her window and I was born.

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Afterward, recalling the event, Margaret Tuohy said that when she and Christopher arrived I, “lay on the cold floor kicking, red with temper, trying to make a speech.”

My dreams as a freckled country boy, going barefoot to school, reflected mostly bashful notions about girls, but the occasional reading of dime novels like “Bowie Knife Bill” and “Calamity Jane” recommended by my chum John Tuohy and “The Lives of the Irish Saints,” urged by my father, stimulated a mixture of fantastic ideals. Secretly, in my dreams, I was in turn, an Indian fighter, a circus performer, a saint frightening myself by my own prayers.

But reading of any sort on a new farm, in these early days, was difficult. Even the young boys had to work and the work was heavy and continuous. In summer, when rain drove us from the fields, we were put to grubbing in the Valley so that new fields could be planted; in winter we did chores and chopped wood when not attending the District School. Reading by daylight was considered slothful, by candle light, injurious to the eyes; and we had to make our own candles. Mother taught us candle making, it had to be done with 11 care. The wick was twisted and stretched down the center of each mould and securely tied thru the tapering end. Then the hot melted tallow was poured into the top of the form and ran down around the wick where it hardened into candles as it cooled.

There was great excitement when father brot home our first kerosene lamp. It was given the place of honor on the walnut center table in the “other room.” The older members of our family of ten children promptly monopolized the circle of illumination. All that we weaker ones could do was complain to mother in the kitchen with her candles and to forget our troubles as she told us fairly tales of Ireland.

My childhood was, however, in spite of its pioneering hardships, happy in its dreams and diligent in its studies. Our teacher for seven winters was my brother Christopher. Then came two years at the Normal School in Winona, with its debating club and juvenile

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romance which seemed to organize my building of air castles around heroes and heroines, mostly the latter, whose commendation I ardently desired.

Still dreaming, I taught school, with indifferent success, at Graceville, saving enough money to pay my way for a year at the law school of the University of Wisconsin. The next year I borrowed from my father to conclude my law course at the University of Minnesota, being the first man to receive from that institution, the degree of Bachelor of Laws.

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My assets and liabilities, at this time, were easy to list, but an accountant would have found it difficult to strike a balance. I had good health, farm-cured, a million dollars' worth of dreams, a license to practice law and red hair. On the other side of the account, I owed my father over a thousand dollars, payable in Paradise and had largely overdrawn my account in the bank of knowledge. My hands were big and red. I had a timid smile and a never failing habit of hunger.

With these resources and liabilities, on my admission to the bar, at the age of twenty-three, a clerkship at forty dollars a month in the office of Frederick G. Ingersoll of St. Paul, was gladly accepted. After a few months experience as law clerk, I rented an office of my own at fifteen dollars a month, bought a desk, two chairs and the Statutes of Minnesota. Clients came, and romance, and with both I did the best I could, all the while building air castles in a wistful way.

Eventually I fell in love with a school teacher who did not know much about cooking. In my opinion Minnie Kelly was beautiful. She was good and honest also—she frankly said she could not cook. Nothing daunted, I told her I would do the cooking myself, and to support my statement I actually bought the White House Cook Book and studied it. It was easier than law and quite as exciting. I was truly a dreamer, farmer fashion, but by instinct I was also an advocate. My persuasion, coupled with my 13 willingness to cook, prevailed, and we were married in 1893.

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My wife was a wise woman. She had a saying of her grandfather, “Have it yourself or be without it,” and introduced me to a rich cousin of hers in Lincoln, Nebraska, whose husband, John Fitzgerald, had lately died with large resources involved in litigation. Without calculation on my part, it came to pass that Mary Fitzgerald, the widow, employed me as attorney for her husband's estate on the salary of four thousand dollars a year. This retainer enabled me to be economically independent in a land of sunshine, wind and warm people.

The work involved was not exhausting, and, more than ever, I dreamed—reading some—visiting occasionally—talking politics at the court house or on the street corner loafing—but all without plan or purpose. I did not know what it was all about.

My awakening came about one hot July day in 1896. In a vacant store on Eleventh Street a crowd of us, sweltering, tense and excited were listening to the bulletins snapping along the wires from the Democratic National Convention in Chicago. Young Harvey Newbranch, fresh from the University, big-eyed, magnetic with Scandinavian suppression, stood on a platform and read the messages. World affairs, we dimly realized, were being brought home to us. A young lawyer, one of our own, was actually capturing the convention in Chicago. His 14 matchless voice, anticipating the radio by over a quarter of a century, seemed to be in the air everywhere. Our neighbor, young Bill Bryan, was actually making history and we were witnessing its creation. As the wires told the story with its climax of protest, “You shall not crucify mankind upon a cross of gold,” we were profoundly moved, and I, at last, woke up. I was thrilled and glad to be alive.

The excitement in Lincoln was almost hysterical when the nomination of Bryan for President took place. Old Pat Barton, born a Democrat, cried publicly. Harvey Newbranch grinned like an Irishman. Other enthusiasts expressed themselves more readily by yelling up and down the streets. Before that day we were only a little prairie town with an illustrious name, but now Bryan's nomination made our town a city and focused upon it the searching attention of the nation. Veteran reporters like James Creelman of the New

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York World—special writers like Julian Hawthorne of the New York Journal—political editors, great statesmen, and droves of demagogues crowded the hotels of Lincoln seeking contact with Bryan and with Bryan's friends. Incidentally these visitors stimulated thought. The people of Lincoln who knew Bryan personally reacted with vigor to this outside influence. Everyone argued. The local Democratic leaders were especially excited. They saw wonderful opportunities in a Bryan victory on election day.

The key to the situation locally, in the narrow opinion 15 of these politicians, was the chairmanship of the county committee.

Early in the campaign two strong factions developed. The old gang with their faithful followers, centered around the chief of police, would ordinarily control the election of delegates; but Bryan's nomination and its possibility so thoroughly awakened the more dignified Democrats of the city that on the eve of the Convention the issue was in doubt. Each side vociferously claimed a majority. Each side accused the other side of fraud in holding caucusses. When the Convention met, great bitterness developed. Abusive speeches were made. Hard names were called and were answered by sneers and sarcasm. The battle raged among the leaders until the rank and file became confused and alarmed. The people loved Bryan and wanted harmony.

I had anticipated this; and when the crisis came, I stood upon my chair and made a plea for harmony. With all the vigor of youth I shouted that, with a united front, an unterrified democracy would sweep the city and the nation in November. My speech was an extemporaneous one, carefully prepared in advance. I really meant what I said and the crowd, spectators and delegates, howled approval. When I sat down, a friend of mine jumped to his feet and moved my nomination as the unanimous choice of the convention for chairman of the committee. As I had only the year before come to town no one, outside of a few personal friends, knew me. 16 I had no enemies. Each delegate evidently thought from the enthusiasm that every other delegate knew me well and I was unanimously elected.

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In the stirring days that followed, it was my duty to preside at political meetings. This gave me the opportunity of introducing national leaders. It was education as well as opportunity. I learned something of the forces that write human history, and in these national leaders I saw types of men appearing on history's pages, I presume, in all ages.

Ignatius Donnelly of Minnesota, scholar, statesman, sage and seer, mellow and wise with much experience, visited Lincoln and I brought him out to the modest little home on D Street and introduced him to Mr. and Mrs. Bryan. Mrs. Bryan said she would visit with me on the porch while "Mr. Donnelly and Will" talked politics in the parlor. I have often wondered since how practical these two great dreamers were in their talk that morning. Donnelly was ambitious, in a noble way, to be Secretary of State. He said so. I encouraged this ambition, at the same time saying that I felt certain that Bryan would make no promises to anyone directly or indirectly. In any event both men came out of the conference charmed with each other. Bryan, boy-like and ingenuous, said he was glad to sit at the feet of Donnelly and learn statesmanship, while the rotund and wrinkled, elder statesman beamed affectionately as he reiterated his good will. On the public platform with an audience 17 before him, Ignatius Donnelly was master of his world. He argued with relentless logic. He appealed to the emotions in poetic eloquence. He told funny stories joyously. So thoroughly did he appreciate his own wit and humor, that his mirth was contagious, and his expressive face made the audience laugh before the words had registered. He was truly a great power in politics, and in 1896 he gave all that he had to Bryan.

Another interesting type of statesmanship, rare and difficult to comprehend, was revealed to me in the person of John P. Altgeld of Illinois. As Governor he had pardoned "the Hay Market Anarchists of Chicago" so-called, and by that act offered himself as a victim to be hunted down by the blood lust of the people. The men pardoned were doubtless innocent, but that simple fact was not important. "They were Anarchists"—"They ought to be hung on general principle"—to the dignified and conservative press the pardon was "A grave abuse

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of power”—“An inducement to lawlessness.” To the man on the street Governor Altgeld was “Another God damn traitor.”

The propaganda to discredit Altgeld had been so subtle and universal, and the poison spread by whispering had been so bitter and paralyzing that when he came to Lincoln to see Bryan, I, in youth and inexperience, meeting him face to face, felt the shock and thrill of fear. He was a magnetic man,—small and thoroughly alive—enthusiastically supporting Bryan and 18 bimetallism—friendly and lovable—but—socialism—anarchy—damnation—hell! All very frightening to a pious and newly awakened dreamer.

During the whole campaign Bryan was the Mecca of democracy, and patriarchs from the East and South who came to pray were invited to preach. A Populist rarely refused to make a speech, a Democrat never. All our committee had to do was to assemble a crowd or steal a congregation, an orator was always available, and almost every type of orator from Cicero to Billy Sunday was experienced.

There came from Boston, George Fred Williams, burdened with Harvard culture, who spoke in classic phrase high over the heads of the corn huskers of the prairie, but with such a restrained passion and deep conviction that he always won applause. The listeners did not always understand the speaker, but they liked his looks and the sound of his voice and were convinced.

From Missouri came the beloved Champ Clark, “Liken' 'is licker,” and devoted from the bottom of his great heart to the youthful leader of his party. He campaigned night and day to a collapse in Omaha. Had he a premonition then, I wonder, that there would come a day when that same leader would stand sternly across his path and deny him the Presidency when it was well nigh within his grasp? Hindoo philosophers, even Irish mystics, might claim such prevision possible; but, why should a great event in the life of a man, any more than 19 a trivial incident, cast its shadow before it? I know at least that in the rush and rub of that great campaign I did not foresee in dreams or otherwise, that years afterwards,

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when Wilson was President and Bryan Secretary of State, Champ Clark, then Speaker of the House would give to me a corn cob pipe made in Missouri, but he would not talk about Bryan. It is wiser, I think, to assume that Clark's political crucifixion was not foreseen by him any more than I, who never smoke, foresaw his corn cob pipe.

In 1896 we were all living, vividly, in the present. To us the world was young. We were fighting a new fight, we thought, for humanity and victory, so it seemed, was in the air.

With a twinge of conscience, I recall that I advised some of my best friends who were tempted to gamble, to bet on Bryan. I think, however, that my enthusiasm and overconfidence was excusable. The Populist party, strong with the discontented farmers of the West, had endorsed the Democratic nominee, and under the magnetic leadership of men like Ignatius Donnelly had hung a picture of Bryan in the parlor of every mortgaged farmstead. The Free Silver Republican organization had diverted to the Bryan standards many young and able liberals who felt themselves called to battle for human rights. The old democracy itself seemed to be enjoying rejuvenation with its leaders harmonious and its rank and file united and enthusiastic. Bryan in person was leading the fight with superhuman vigor and with wisdom and discretion never afterward attained in his long political career. The republican leaders were frightened, and with ample justification. Could the ballots have been cast some two weeks before election day, the voters would, in my opinion, have chosen Bryan as President. At that time it had not occurred to me that a political campaign meant anything deeper or more significant than a scramble for honor or office. I had been relying on enthusiasm and oratory to win the election. I had not yet witnessed the master strategy of money; its power for intimidation and purchase. When a friend of mine in the First National Bank of Lincoln told me that the local republican committee had received a remittance of fifty thousand dollars to be spent in the closing days of the campaign, I was incredulous but, in a few days, reports came in to headquarters that democrats were being hired in every precinct to go about talking for McKinley. Even my friend David Fitzgerald came into the office wearing a McKinley button.

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“What does this mean, Dave?” challenged the auditor, John Muldoon, putting his finger on the button. “You know you're a Democrat.”

“Sure I'm a Democrat,” grinned Dave without shame, “but I get twenty-five dollars a day to wear this button and knock Billy Bryan—but I'll vote right.”

N. S. Harwood, President of the First National Bank, told debtors seeking renewal of the loans, that, if Bryan 21 was elected, all notes would have to be paid when due. Many employers told their men that there would be no more work for them after election unless Bryan was defeated. This combination of bluff and bribe often frightened where it did not persuade and thousands of small business men as well as timid toilers were stampeded on the eleventh hour of the campaign.

The election returns registering our defeat were incomprehensible to me. In vain had been our appeals—labor would not listen—in vain had been our warning to agriculture—the farmers were asleep. I could not understand it. I was not bitter in my disappointment. I was confused. The real meaning and significance of a national campaign was not to come for many years. At this time I thought that politics was only a struggle for honor and office—a game for ambitious men—at best a chance in some vague way, to ameliorate the hardships of the poor.

My awakening by Bryan and the campaign was, it will be observed, more emotional than intellectual. I wanted to do something worth while but did not know just what. My knowledge was fragmentary and unordered. I was thirty years old and took my statesmanship seriously. I wanted to help steer the ship of state but without knowing much of the waters in which it sailed. To this self-imposed burden of statesmanship was added the responsibility of parenthood and I was older 22 at thirty caring for my daughter and the State than I ever have been since.

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In the peaceful days that followed the turmoil of the campaign of '96 men soon forgot the issues that had been argued and gave thought to the dull business of making a living. A general increase in production of gold, stimulated industry and trade, making it easier to pay debts, and improving living conditions; incidentally this increase in gold production vindicated Bryan's free-silver argument and bi-metalism, but nobody cared about that. We were all sick of politics. What we wanted was relaxation, more money and some fun.

The average citizen undisturbed by the itch for social recognition, found Lincoln, as the capital city, young and clean, a pleasant place to live. The university with its teeming, honey-laden hives of girls and boys; the lack of factories, smoke and underpaid toilers; the softening influence of retired farmers living modestly to educate their children, created an atmosphere that was homey and cheerful. But Lincoln had, definitely established, an upper crust, her men of fashion and women of style, the bon ton of the town, her four hundred, society. Apparently there were very nice people in this fashionable group. Some of them were educated, a few, especially among the men, might be considered intelligent, many of them in business exercising good judgment as to values and proficiency in calculating interest. This social upper crust was loyal to its own group in spite of cordial individual hatreds and jealousies.

My wife in her youth and innocence, invited to this and that genteel affair enjoyed the notion that she was in society; but I knew we did not belong. She was convent bred and gracious in manner. One of the nice sororities at the university pledged her, as a member, promptly on her registration as a student. She did not, however, as was the custom, spend all of her husband's money for gowns with long trains and mutton-leg sleeves, Gainsboro hats, with a forest of ostrich plumes, high-heeled shoes, silk stockings and accessories, which only the quick and devilish know how to utilize. Of course, I tried hard to please my wife—to qualify as a cultured gentleman—to be nice—but the best tailor in town could not cut trousers that would make my big feet forget to follow the plow, even in the ball room of the Lincoln Hotel. I could talk to an audience, but was inarticulate in company. Polite

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conversation was for me, like going to confession, a solemn duty wherein no faults could be hid or forgotten, but all must be always *meo maxima culpo* . Through all of my wife's gallant efforts to lead me into at least the twilight zone of the fashionable life of Lincoln, I persevered; and of course it was not always unpleasant or humiliating.

We lived for a time with “Cousin Mary” as my wife called Mrs. Fitzgerald, in a palatial home surrounded 24 by a park-like orchard of five city blocks through which the driveway wound in graceful curves past summer house and fountain and over which persisted an enveloping atmosphere of romance and of tragedy. It was built for a home by a great man—a great builder of railroads—whose passion for building broke the powerful brain, untrained, with which nature endowed him. John Fitzgerald in his fifties married Mary in her teens and dying left her in her youth the mother of four children and mistress of his great house.

The society women of Lincoln never understood Mary Fitzgerald. Her silent and majestic comeliness, her big house, her diamonds and furs—her tradition bordering on mystery made timid people a bit afraid of her. And she was indifferent, living in her dreams, and placid in her philosophy, expressed with saintly calm and gentleness, “Do what you like but don't get caught.”

If Willa Cather writing of pioneer days in Nebraska had made contact with the reminiscent dreams of Mary Fitzgerald more than one good story would have been likely.

I remember one evening my wife, at the piano, was entertaining Cousin Mary and the family group. Several classical selections had been rendered and appreciated as a matter of duty and self-respect. I suggested that for the benefit of my soul I would like to hear “The Wearing of the Green.” My wife played it, of course, with great spirit, and on its conclusion, Mrs. Fitzgerald turned to

Mrs. Joseph Manahan ( *Mother of James Manahan*

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25 me and casually said, "That reminds me of the carload of guns we have in the cellar. What shall we do with them?"

"Guns!" I exclaimed, with visions of A. P. A. charges and police investigations in my mind, "Guns in the cellar! What for?"

"They were Fenian muskets to free Ireland," she explained. "John paid the freight on them from the Canadian border where they had been sent for the use of the Fenian army that was to invade Canada."

"But where was this Fenian army?" I asked, "and when was it going to invade Canada?"

"Oh, I don't know," with weary expression. "John wasn't mixed up in it, but Edd was a captain I think, his brother Edd, and these guns were for Edd's soldiers, to meet in the woods along the border; John said it was a crazy notion, and was afraid Edd would be arrested, so he had the railroad ship the guns here, and they have been in the cellar ever since. I used to worry about them, but what's the use."

The next day, with one of the boys, I found my way to the back vault of the basement, and there, box on box, like a lot of coffins were guns for a regiment it seemed; regular U.S. army muskets, bayonets and all. That night I dreamed of Indians, not Irishmen, skulking from tree to tree in the deep Canadian pines. While we were considering what disposition could be made of those old guns, now long out of date and worthless as war 26 weapons, I often wondered why the Fenian Irishmen of a former generation organized their madcap idea of fighting England by invading Canada. Was it a matter of sentiment? Did pride or religion engender the motive? Or did it, as I vaguely thought possible, have something to do with the rights of people in the lands of the earth on which they lived? I had much yet to learn.

The Fitzgerald offices had the usual equipment of that period, tall wooden filing cases, roll-top desks, chairs and a number of steel safes for money and valuables. One of these

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safes had not been opened in years. No one knew its combination. Search was made in every likely place for the numbers that would enable the lock to work—in pigeon holes of old desks, in discarded pocket books, through all of John Fitzgerald's private papers and memorandum books. Everywhere in vain. The magic numbers could not be found; and that strong and stubborn safe could not be opened by guess work.

During the search for its combination every hour added to the speculation and conjecture as to what the old safe contained. John Muldoon, the old bookkeeper, hinted darkly that John Fitzgerald for years before he 'was stricken' had 'odd ways' and often on emergency produced 'rolls of money' from 'God knows where.'

Tom Kelly, somewhat of a sport, would 'bet his shirt' that the 'old box' had in it a will 'giving everything to Mary.' Mrs. Fitzgerald personally made no comment<sup>27</sup> as we watched the locksmith drill a hole in the safe door to force the lock on the inside, but her inscrutable smile inspired the hope in me that the opening door would reveal something interesting, perhaps a package of old love letters tied together by a faded pink ribbon, or at worst documents revealing some old and outlawed romance. We were all more or less disappointed but the old safe was not empty; nor did its contents lack in interest or information; in fact the silent voice of history seemed to be struggling for expression in the old files and letters brought to light; the doctrine of force in the philosophy of life and liberty and the doctrine of peaceful persuasion and legislation were each represented by actual and concrete truth with the life of that remarkable and unlettered man whose treasure box we had rather ruthlessly broken open. The roster of the Fenian army, the guns for which he had hidden for years in the back basement of his home, was in one bulky file which might well have been indexed in the books of the god of war. It revealed an organization of force extending from the 'head-center' in New York down through the ranks of over 200,000 ex-soldiers of the great Civil War, scattered all over the United States, with definite plans to move against Canada. There was a day when it meant grim war.

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Another bundle of papers, with greater appeal to the goddess of peace, consisted of old letters, proclamations and newspaper clippings telling of the Irish National League of America and the efforts it put forth, under the presidency of Fitzgerald, to finance the cause of Home Rule in Ireland. In his love for his native land Fitzgerald evidently did not quibble as to methods—guns and armies, if necessary, money and legislation, if possible, appeals to public opinion—anything for freedom for Ireland. When William E. Gladstone, the great English statesman, proposed to give Ireland the right to make her own laws and govern herself in local affairs and when Charles Stewart Parnell, the Irish leader, agreed to this ‘home rule’ Proposal, Ireland's friends in America under the leadership of Fitzgerald organized public opinion in almost every state and contributed generously to meet the campaign and living expenses of the Irish members of parliament. In one highly prized letter received by Fitzgerald from Parnell that great statesman used the following impressive words of wisdom and acknowledgment:

Avondale, County Wicklow, “September 25, 1886.

“To John Fitzgerald, Esq.

“Dear Sir: The rejection of the Tenants' Relief Bill, the scarcely veiled threats of the Irish Secretary, and the alarming increase in the number of evictions, clearly indicate the commencement of a combined movement of extermination against the tenant farmers of Ireland by the English Government and the Irish landlords. I lose no time in advising you of the imminence of a crisis and a peril which have seldom been equalled even in the troubled history of Ireland. I know that it will be the highest duty and the most honorable task which can engage the attention of my countrymen in free America to do what in them lies to frustrate the attempt of those who would assassinate our nation, and to alleviate the sufferings of those who, unhappily, must be the numerous victims of the social war which has been preached by the rich and powerful government of England against our people.

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“In sending us that moral and material assistance which has never been wanting, has never been stinted, from your side of the Atlantic, you will perform two most important and valuable functions: you will encourage the weak to resist and bear oppression, and you will also lessen and alleviate those feelings of despair in the minds of the evicted which have so often and so unhappily stimulated those victims to recourse to the wild spirit of revenge. In doing so you will assist in preserving for our movement that peaceable character which has enabled it to win its most recent and almost crowning triumph, while you will strengthen it to bear oppression and encourage our people until the final goal of legislative independence has been won.

“Yours faithfully, Charles S. Parnell .”

But, it seems, the high hopes of Parnell, and of Gladstone also, were doomed to failure and disappointment. 30 The Tory government of England prevailed. Home Rule for Ireland was defeated, and to stay prostrate and denied, until there come a time, almost half a century after the unused Fenian Guns were hid in the cellar of John Fitzgerald, when more modern guns, under the direction of a ‘head-center’ located ‘on the run’ all over Ireland, forced from a reluctant government, under the chastening stress of a world war, the home rule of an Irish Free State.

I have now in our log cabin on Big Marine Lake, where I write some of these pages, one of the Fenian guns, salvaged from the Fitzgerald cellar, and I have in our St. Paul offices a beautiful etching of Wm. E. Gladstone which was presented by him, personally, to Fitzgerald, and I have also, persistently with me, the tradition of John Fitzgerald half Irish patriot and half builder of railroads, but as to how, and to what extent, these things, and the Irish within me, have shaped my life, let these pages tell—for I do not know.

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It was always comparatively easy for me to be tempted. Before experience and years had taught me to be somewhat cautious, a little flattery was enough to enlist my co-operation in almost any sort of enterprise, good, bad or indifferent. This was especially true if the project, or as the case might be, the sin, suggested, appealed to my fairly well concealed vanity as a public man. Early 31 in life I got the notion, and it has clung tenaciously, that I was a statesman, with all of a statesman's 'rights, privileges and immunities.' And when 'Benny' Branch, a dear friend of ours, sight-seeing in Rome, wrote my wife that she had been startled when she suddenly came upon a bronze statue of Augustus Caesar and exclaimed, "Why! There's Jim Manahan," I took the matter quite seriously, regardless of the proud boast of Irishmen that the Caesars of Rome never succeeded in establishing a colony in Ireland. A more modern suggestion of my possible connection with the statecraft of history was made in jocular vain by Bryan at a banquet in Omaha where we both talked. He said "It is not surprising that Manahan is a good democrat, he has hair like Thomas Jefferson and a face like Andrew Jackson."

And so in my youth and inexperience there was subtle temptation, not to be denied, in the suggestion that I should run for Congress. My friend E. A. Rogers, a traveling man with headquarters in Lincoln, initiated in me this tempting ambition. His trade territory covered the First Congressional District of Nebraska, and his friends in the smaller towns he thought would be able to swing many delegates to my support if I could capture my home delegation of Lincoln and Lancaster County. We were standing in front of the Post Office, on O Street talking over these alluring possibilities when we were joined by a short blond grocer from the south end of town, a politician by instinct, with no style and little 32 standing in the business world. Without formality, we three, Charley True, the grocer, Rogers, the traveling man, and I, the statesman, adjourned our political meeting from the steps of the Post Office to the iron fence surrounding the park. On the fence and in the shade we sat and organized our campaign. It was to be a "still hunt" canvass for delegates. This was Charley True's suggestion. He argued that by secretly arranging for one 'good man' in each ward to be known as the 'ward chairman,' who in turn would select

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'one good man' in each voting precinct to be known as 'precinct chairman' all working 'under cover' until the very hour of holding the caucusses, would enable us to steal a march on the unorganized opposition in every precinct and bind the delegation to vote 'first, last and all the time' for Manahan for Congress. Rogers agreed on the policy outlined by Charley. So far as the City of Lincoln was concerned, he said, a 'pussy-foot' campaign was the 'checkers,' but to get delegates from the country districts, down on the Kansas border especially, he would have to do 'some trading' with the local candidates for state and county offices. None of us said anything about our platform. What might be an issue in the campaign did not occur to any of us. My qualifications to serve in the Congress of the United States were never questioned or alluded to in any way. I was thirty-one years old, without any legislative experience, and at the time of this first conference did not know what counties constituted the congressional 33 district we were conspiring to capture; but personally I had no doubt whatever about being a statesman. I took the matter seriously.

We had several months in which to complete our organization. We spent no money. Our 'gum shoe work' as Charley True called it, with our injunctions to secrecy, enlisted the support of many 'ward workers.' When the caucusses were held old politicians were surprised at the 'Manahan sentiment' that was disclosed. The county convention, meeting in Lincoln in Bohannans Hall on July 27, 1898, was controlled by our friends, and I was authorized to select the delegation to represent the county at the congressional convention.

The Democratic congressional Convention met in Platsmouth, Nebraska, August 11, 1898, and on the 28th ballot, after much speech-making, I was chosen as the party's nominee for Congress. The Populist Party, meeting at the same time and place, endorsed my candidacy. The "Free-Silver Republican" organization "followed suit" and I made the trade on what was known as the "Fusion" ticket.

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The campaign was in charge of Harvey Newbranch as secretary of the congressional committee. We had little money to spend for organization and had to depend largely on my speaking to supplement the volunteer work of my friends.

My “key-note” speech, opening the campaign, was made in Lincoln and fell flat. It was a stilted production 34 committed to memory. The nomination had gone to my head. I tried to be statesmanlike and dignified. I succeeded in being dull. The audience was dead. I did not know what was the matter. After the meeting, hungering for sympathy if not praise, I sought out Newbranch, and asked, “How was it?”

“Bum,” he exploded. “Why in hell didn't you cut loose in your regular way?”

Then no doubt noting my crestfallen expression, he continued more encouragingly, “Throw that speech away, Jim, and I'll write you a new one. Then you can talk extemporaneously and be yourself.”

As the campaign progressed I recovered some of the ground lost by my over refined “key note” address. I spoke in every good sized town in the district. On identifying myself to the local reception committee that met my train in one village the chairman looked me up and down quizzically for an embarrassing moment and then dryly observed, “Well, now, you're not so bad.”

I asked him who said I was bad.

“Oh, nobody said you was bad but we wrote to headquarters telling them that the Republican candidate's picture was in most every window in town and we wanted some pictures of Manahan.”

“Did you get the pictures?” I asked.

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“No, but we got a letter from Newbranch,” and the man grinned, “He said that the committee had no pictures of Manahan. He's too damn homely. Anyhow, 35 the Democratic candidate is running for Congress on his principles, not on his face.”

My opponent was a good looking young man by the name of Burkett. He knew as little about the science and meaning of government as I did, but had the advantage of an organization with ample funds. We argued some about the tariff; made many bombastic statements of what our grand old parties had achieved; re-argued the ‘silver question’ and told stories at each other's expense. Burkett generally said in a casual way, “They tell me that Jim Manahan is running as hard as he can run in his race for Congress—in fact stirring up a lot of dust. Well—well—when our train pulled out of Lincoln this morning a brindle pup ran after it barking to beat the band and raising more dust on the road than the train did on its tracks. As the train gained in speed the little dog barked louder and pounded up more dust. The question wasn't, would the dog catch the train, but what would he do with it if he did catch it?” Then after a smiling pause he would ask, “What would Manahan do in Congress if he got there?”

And Republican morons would shout, “Hit him again”—“Hit him again,” and clap their hands just like good citizens.

On election day I stayed up at headquarters listening to returns come in until after midnight before realizing that I was defeated. And when I got home to the old Grand Hotel I found myself locked out of our apartments. 36 My wife was not angry with me because I lost. She had bolted that door before she knew the result of the election. Her patience was exhausted by my repeated and prolonged absence. “Why couldn't I stay home like other men?” She wouldn't give ‘the snap of her finger’ for any office. She hadn't married ‘a traveling man,’ she hoped. If I didn't like her, ‘say so.’ I had to promise not to run for office again and it took me almost fifteen years to get released from that stipulation.

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After this 'dabble' in politics I resumed my prosaic work as a lawyer. This afforded many leisure hours for reading and study, some of which were wasted. I bought a bicycle and enjoyed a adventuring on the country roads which around Lincoln, lakeless and treeless, were not especially romantic, but always seemed inviting to the restlessness and wanderlust within me. Before the introduction of golf, cycling was considered ideal outdoor exercise. Considerations of health were a good excuse for closing my law-books and forsaking city streets for an excursion through fields of wheat and corn. My wheel and I had no fear of being run down. Automobiles were quite unknown on the country roads. There was little to break the monotony. Wind and dust in abundance. Atmosphere vibrant with life, Nebraska. A girl with flaming red hair streaming back as she drove in the sunshine a trotting horse hitched to a sulky, round and round a small farm house and barn. Not another sign of life about the place. Was the farmer's daughter

Mrs. James Manahan ( *Lincoln, Nebraska... 1898* )

37 'playing horse' by herself for the life there was in it? Or had I witnessed across the acres of cornfield the final chapter in the ritual of a homemade shampoo by a girl with golden hair? I never knew.

The University of Nebraska was in our day the salvation of the intellectual life of Lincoln. Without the University the city would have been a rather sordid place dominated by politicians in the service of the Burlington railroad. That corporation maintained its influence by the lavish issuance of passes to ride free over its lines. Railroad executives were in consequence popular in social affairs without much regard to culture or to personality. At a reception given in honor of a distinguished visitor the lady of the big house where it was held was inclined to be effusive and patronizing especially to the young men and women of the university. One of the fair co-eds in an effort to make conversation, asked the plump hostess, "Did you ever go through algebra, Mrs. E.?"

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“Algebra—Algebra,” replied the puzzled lady doubtfully: then catching sight of her husband she called out to him, “Dearie, is Algebra on the B. & M.?”

When Dr. Edward A. Ross, who had won recognition as an author and sociologist at Leland-Stanford University before coming to Nebraska, proposed to conduct a seminar for post-graduate work on the subject of colonies and colonization, I registered as a student and enjoyed the work. It was inspiring to listen to Dr. Ross lecture and take part in the discussions he invited. Facts 38 were of prime importance in the acquisition of knowledge and in the marshalling of facts Dr. Ross was always fair. He had, I think, however, an unconscious prejudice in favor of the Nordic race and Anglo-Saxon civilization so-called. Intimidation and exploitation of India by England was ‘unjust’ but intimidation and exploitation of the Philippines by Spain was ‘tyranny’; Cromwell in Ireland was a ‘hard fisted soldier’ but Wyler in Cuba was a ‘butcher.’ But regardless of the Nordic Myth, fixed like a religion in his mind, Dr. Ross was a brave and lucid thinker and an inspiration to students seeking truth under his guidance. He had the happy faculty of provoking his class into a questioning frame of mind. We had to be shown. And the harder we made the exposition for the ‘professor’ the better he liked it. He enjoyed argument. One evening we discussed the question of race suicide, a phrase coined by him in one of his earlier books. In the discussion I took occasion to condemn birth control. Dr. Ross countered with a mass of statistical data, showing the multiplication of degenerates. I replied that his mathematics showed the importance of multiplying, and not curtailing the production of the fit. Dr. Ross smiled tolerantly and calmly proceeded to show that the health and happiness of the home and the economic well being of the state were better served by medium-sized families. I had nothing in kind to say, having done no research work on the question, so in desperation I had to fall back on 39 myself as an authority, I said, “I know what I am talking about. My mother bore twelve children. I'm the poorest specimen in the lot. There never was a happier bunch. The doctor was a stranger in our house. My mother was never sick and never complained.”

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“Now, Manahan,” quietly rejoined Dr. Ross, “I will leave it to your sense of fairness, would not your mother have had more out of life, a richer enjoyment, with time for reading and happy relaxation, if instead of twelve children she had, say, four or five?”

There flashed across my mind a vision of my mother's toil hardened hands and patient smile that would not be denied by me, but lawyer like I said, “Yes—perhaps so—but—five children—that would have left me out—I was number six.”

Ross threw up both hands, and with a laugh capitulated saying: “Well, anything that would leave you out of the picture would never do.”

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### CHAPTER II INVESTIGATING AND FIGHTING

[ 1 ]

DURING the winter of 1904–5, after ten years of work and play in Nebraska, we returned to Minnesota where I resumed the practice of law. I was glad to be at home, again, in my native state, but for a long time the memory of Nebraska persisted. A whiff of hot air down a narrow street in St. Paul, would as like as not, remind me of broad prairies and the scorching, sand-laden wind that now and then swept across from Kansas and the Southwest. There is something unforgettable about the open atmosphere and sky of Nebraska. Something that gets into one's blood and infects the whole system with Nebraskitis. Something which binds friends initiated by it with an unbreakable bond. To me Nebraska seems like an enduring sunrise, ardent, glowing, and always young. It is not a matter of topography, nor of geography. Riding on a Burlington train from Omaha to Lincoln, with a short stop at Ashland—could anything be more prosaic? But, could anything be more wonderful when under the unbroken arch of a rainbow, in the month of May, with youth and love at the end of the run? So perhaps my attachment for Nebraska may be largely a matter of sentiment. In any event it is a part of what I am.

I was reared on my father's homestead farm near Chatfield, some forty miles from the Mississippi River at Winona, and I can recall being frightened and thrilled, when quite a little boy, by the stories my mother told of pioneering days, recitals of dangers and hardships experienced by my father "teaming" between Winona and Chatfield. The country was new and roads at times almost impassable. To augment the hazards of the early settlers engaged in farming, or in transportation by team, violent storms came down upon them unpredicted and furious. It was a hard life. Our nearest neighbor was Ed Touhy, who, like my father, was a small Irishman with a vivid personality without much belligerency. The little neighborhood dominated by these two Irishmen was called "Bunker Hill" and was, I suggest, comparatively pacifistic, while the Irish community that lived down on Root River, sometimes unkindly referred to as "the river Irish" had many good fighting men. These fighting Irish immigrants considered a colony of Norwegian immigrants living just below them on the river as "ferriners" who ought, on general principles, be denied the pleasure of loafing on the streets of Chatfield on Saturday night. This local racial animosity was, of course, without justification. None was necessary. It just happened as an incident of pioneering by young and vigorous men craving excitement. These two groups of Americans in the making, the "river Irish" and the "Norwegian settlement" did not like each other's brogue and so they argued the matter out with their fists. Had there been an objective to be gained by either group, the argument and encounter would have been called a riot, or a double or compound riot. To me, a small boy, it was a thrilling affair, as by discreet eavesdropping in the shadow of the barn, I overheard Ed Touhy and my father in a reminiscent mood.

"Do you mind, Joe, the night the Irish lads had a settoo with the Swedes?"

"They were Norwegians, Ed," said my father, a stickler for accuracy.

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“Norwegians, were they? Be mars, what's the difference?” retorted our peppery neighbor, and to mollify him father said quietly, “I don't know—they were big fellows anyway.”

“Big and soft. Dennis kicked the whey out of three of them before they could put him out of Hank's place,” retorted Ed, adding, “not a rale man among 'em.”

“Didn't the trouble start in Morrisroe's saloon?” questioned father, always hostile to the liquor traffic.

“G'wan now, Joe, and keep yer shirt on ye. Don't I know that the drink is bad; but the Swedes wouldn't 'set'em up,' they're stingy.”

“And the Irish lads drove them out of town,” mused my father reminiscently.

“Out of town! Every last one! Whaled them down the street with sledge stakes—like sheep they ran—and 44 they never came back from that day to this,” triumphantly announced Ed Touhy.

Many years later a little group of congressmen were gossiping in a smoking room of the capitol. The talk turned to Pioneer days and Halvor Steenerson the giant member from the Red River Valley District of Minnesota told, as the most exciting incident of his youth, of a “scrap with the ‘river Irish’ at Chatfield.” His description of the event harmonized with the version given by Ed Touhy in everything except results. As he told it, the Norwegians were victorious. They “threshed” the Irish and did “a good job”—driving them all out of town —“sobered them up” for “once at least.”

“To refresh your recollection, Halvor,” I said, “didn't the Irishmen get the advantage of the engagement by the use of sledge stakes from their sleds?”

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The big congressman was surprised that I showed a familiarity with the details, but quickly recovering himself, raised his huge fists and bellowed, "With these, what would I care for half a dozen Micks with clubs?" And what could I answer to that?

The Northwestern Pioneers, mostly of Scandinavian, German, French or Irish descent, were strong and courageous enough physically. Their spiritual temperament was superb, even knightly, but their thinking was very elementary and quite lacking in foresight. True enough, many of them exercised good judgment in the use of their land, in diversification of crops, in the purchase and 45 care of farm machinery, etc.; but in the more important matter of transportation and finance they were as a class unsuspecting and childish. I almost wrote, "stupid," because, I also for many years after I was a lawyer, and thought I was a statesman, was profoundly ignorant in such matters. Of course, I now know that farmers like Ignatius Donnelly, Tom Meighan, Benjt. Sundberg, Erick Olson and other leaders of the old Farmers Alliance understood and could read the writing on the wall, warning them to arouse and organize producers for self protection.

The pioneers in transportation finance and industry on the other hand, such as Jim Hill, Jay Cooke, Weyerhaeuser and Alex McKensie, were men of rare intelligence, and stern determination. They knew just what they wanted and how to get it.

While the pioneer farmer, with innocent eyes, looked upon law-making and government as the job of politicians, the pioneer "empire builder" knew that "law," as the most important department in his bank, that "government" more than tonnage, measured the profits of his railroads.

The railroads were united and strong in their allies. In those early days, while the farmers were grubbing, planting, harvesting, drinking, sleeping and love-making, doing many things without much thinking or foresight, the railroad builders, brewers, lumber barons and bakers were organizing for self protection and mutual 46 advantage under the vague but potent term of "business." To help "business" congress gave to the railroad millions

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of acres of government land, passed laws making it easy for timber corporations to grab and cut down great forests, and vested in bankers the control of credit with power to exact excessive interest rates. The brewers also were in this "Big Business" combination organized to secure "friendly legislation" by Congress and the different states. The liquor interests were not admired by the bankers, nor were they especially beloved by the lumber lords and the empire builders, but the saloon keepers were friendly fellows and, on election day, controlled many votes. The brewers therefore delivered "the goods" at election time and were rewarded by "protection" between times. Being interested primarily in profits, which were measured by consumption of liquor, the brewers operated many attractive bars for the comfort and pleasure of weary men without comprehending in the least that many of their tired and discouraged patrons were brought to their unhappy state by the oppressive rates and charges for transportation and money by their colleagues in business. It was a very complete and vicious circle. The railroad absorbed the farmer's profits by excessive charges for hauling his crop; the brewer comforted him with good beer making him forget the excessive freight rates and reminding him to vote right for the politicians, who in turn would vote "right" to legalize the excessive freight rates. Of course, the ordinary saloon keeper, the ordinary farmer, the ordinary lawyer did not know the difference between a freight rate and the black flag on a pirate ship. We were expected to mind our own business, vote the ticket straight, pay our debts, say our prayers and be good.

My education in these matters, strange to say, did not come from books or schools, nor was it acquired by me in striving as a politician, but was absorbed, or I might say experienced, in the dull, detail work of trying certain cases of which I must tell incidental to the story of my bumps and bewilderments and occasional harvest as the seasons run. In professional parlance my enlightenment was acquired in the usual course of business.

On re-opening my law office in St. Paul after an absence of ten years, I found myself quite forgotten. Clients came with "reluctant feet," the rent collector with painful regularity. I should have been discouraged, but for some inscrutable reason was not. Walking down

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Fourth Street one afternoon, I met an old friend whose sanguine temperament beamed from his ruddy face as he casually announced, "I believe you're just the man I'm looking for."

I replied, "Which one of my many creditors do you represent, Edd?"

He grinned knowingly, "Oh, I represent all of them, but they don't know it. I think you are the man I want to take over my business."

Not knowing just what he meant or whether he was 48 in earnest I countered, "Thinking of joining a monastery, are you? It's an easy life."

"I am not joking," he said, "the Northern Pacific has offered a retainer as counsel of its Spokane Division. I hate to leave St. Paul, where I have a good practice and many friends, but this place with the railroad is mine as long as I can do the work and the salary one that I can't afford to turn down."

In concluding our talk that day, Edd Cannon, hard-hitting lawyer though he was in the court room, spoke as wistfully as a mother talking for her daughter's comfort, "No, Jim, I am not selling my business, nor my clients' cases—my clients trusted me and all I want now is to protect their interests. I am turning them over to you and John with that understanding—nothing else."

John Cannon, brother of Edd, and I organized the law firm of Manahan & Cannon and found ourselves a going concern. We had our opportunity.

## [ 2 ]

When we succeeded to the law business of Edward J. Cannon, we inherited George S. Loftus, as a client. To lawyers in general practice, Loftus, as a client, was a valuable asset, not as a matter of fees, for his business was comparatively small, but, rather, because it seemed easy for him to win. His radiant personality threw a glamour of great import over

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the most trivial dispute, perhaps an argument over the dockage on mouldy hay 49 in a car delayed in transit, or the imposition of excessive switching charges on a shipment of potatoes. He brought, to every cause in which he appeared as a litigant, a flashing eye in retort, a seductive smile in persuasion and, in the statement of his case, he, somehow, with the art and instinct of a Cicero, allied himself with the public good. He could answer, eloquently, with the word “yes” or “no.” In his own mind, he was always “right”; he could not be “wrong.” It required exceptional stupidity, as a lawyer, to lose a case, with George Loftus as a client.

Early one morning, Loftus sailed into my office, with banners flying, so to speak, his handsome figure vibrant with energy, his eagle eyes flashing battle, his voice with the ring and order of a commander. He slapped me on the shoulder, as if conferring knighthood, and said “Put on your hat and come with me.”

“Anywhere, George,” I answered, as I reached for my old hat, “but why?”

“There is a hearing before the Commission,” he said, “and I want you to represent me and some other shippers.”

“But I know nothing about it,” I remonstrated.

“Oh, that's all right,” he breezily answered. “I will tell you all about it on the way up to the capitol.”

No doubt, the explanation he made, as we walked up Robert Street, was lucid enough, but the subject matter was new to me, involving the technicalities of transportation, so that I had only a vague notion of what confronted us upon arrival. The legislature, it seems, had passed a resolution directing the Railroad and Warehouse Commission to investigate freight rates, generally, in Minnesota, and especially merchandise rates, for the purpose of lowering them. The Commission had already given the shippers a hearing in support of the proposition to lower the rates. Many of the shippers, Loftus among them, had appeared,

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personally, but without counsel, and after they had testified, the railroad lawyers had, by a lot of trick questions on cross-examination, subjected the farmer shippers especially, to ridicule and contempt. It was, now, the turn of the railroads to put in their testimony in favor of higher rather than of lower rates. "And," said Loftus, in conclusion, "we want you to go after their witnesses, like they went after ours—and give them Hail Columbia."

When we arrived at the capitol, we found the large court room of the Commission occupied by a group of well-groomed and prosperous gentlemen.

"All the 'big boys' in the business, I guess," whispered Loftus, as we sought obscure seats, left unoccupied, in the lower end of the big room.

Judge Ira B. Mills, presiding, flanked on either side by a fellow commissioner, sat at the end of a long table of mahogany. On one side of the table was ranged a formidable array of lawyers, representing the different, interested railroads. The spokesman and trial lawyer for the group was Cordenio A. Severance, the aristocratic, 51 junior partner of the great firm of Davis, Kellogg & Severance, organized by Senator Cushman K. Davis, before his death, and continued, in his name, by the surviving partners for years afterward. Across the table, facing the lawyers, and, in easy confidence, close to the Commission, sat R. I. Farrington, vice-president of the Great Northern Railroad, called, as the first witness, and examined by Mr. Severance.

It was a gentle, orderly and dignified proceeding. The questions were politely put, Mr. Severance reading them from a typewritten manuscript. Mr. Farrington, smiling, answered, reading, in a soft voice, from what was, obviously, a carbon copy of Mr. Severance's typewritten manuscript.

This cooking and canning, in domestic parlance, of sterilized testimony, continued, hour after hour, before the Commissioners, who sat huddled in their chairs, like three wise old owls, moving only their eyes back and forth, from lawyer to witness and back again to lawyer,—sleepy eyes, unblinkingly, on Severance as, politely, he read his answer, back

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and forth, in and out, like bees bringing honey to the hive, and with the bees' sense of humor and tolerance when undisturbed, the hearing proceeded in orderly fashion. Tariffs, tables, summaries, schedules, exhibits A. to so forth, seeming to show tonnage, multiplied by miles and divided by dividends, were offered and laid upon the mahogany table for the edification of the commission and to my certain bewilderment.

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“On this showing,” suavely suggested Mr. Severance, “might we ask your opinion, Mr. Farrington? Are the merchandise rates in Minnesota, too high or too low?”

“Too low,” smiled Mr. Farrington and Judge Mills, at last, woke up,—blinking tired eyes.

After the typewritten questions and answers had been read into the record and some explanatory observations had been elicited from the witness, Judge Mills asked if any one else desired to ask Mr. Farrington any question. I found an open space near the foot of the table and stated that I would like to enter an appearance as attorney for certain shippers before taking any part in the hearing.

“And what is your name, sir?”

“Manahan, James,” I added diffidently, “may it please the court.”

“And whom do you represent?”

“The Minnesota Shippers' Association,” I answered.

“Very well, proceed, Mr. Manahan.”

Foolishly, I tried to cross-examine Farrington on the Great Northern rates and quickly revealed, by my pointless queries, that I did not know the distinction between merchandise and commodity rates. Farrington, as patiently as if dealing with a child, set me right and explained in detail, to the delight of the traffic men present and to my great

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embarrassment. In my confusion, every question I asked seemed to invite a sarcastic or witty reply that never failed to bring a titter of laughter 53 from the fat and comfortable railroad officials and lawyers. Even the solemn-faced commissioner, Staples, and the newspaper reporters were smiling at my discomfiture. It was hard to endure, but I kept driving away, getting madder and madder, underneath my apparent calm, with every minute of merriment at my expense. Finally, Judge Mills suggested that, as Mr. Farrington was very busy man, I might hurry a little and conclude my interrogation. It was my turn to do some answering and I conceded, of course, that the witness was a hard-working vice-president, although it appeared that others had prepared all of his testimony for him. But it was out of the question to finish the cross-examination within the hour, that, in fact, I had not yet started, that it might take weeks, but I proposed to find out how much the witness knew of what he testified, without the aid of his manuscript. The smile left Farrington's face. The reporters scribbled, furiously. The Commissioners, wide awake, at last, with their heads close together, consulted and, presently, announced an adjournment.

When we got outside, on the steps of the capitol, I exploded, "Why in Hell, George, did you put me up against a deal of that kind, without any preparation?"

He was sorry and distressed, but jollied me along, saying, "They are bad actors, that bunch. You got mixed up, a little, but you did not let them bluff you." He gave 54 me his lovable smile, saying, "Don't worry, Jim, I'll tell you all about it over-night."

To be dauntless and unafraid in any emergency was like George Loftus. He would undertake to impart a university course on transportation in one night.

The next day, when the hearing resumed, the court room was crowded. The commissioners appeared to be more friendly, but a bit perturbed. The reporters were reinforced by a number of other eager young men, keen for a story. The railroad group, lawyers and officials, were dignified and arrogant, but still polite.

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As the hearing progressed, from day to day, I improved in my technique as a cross-examiner. Questioning experts and officials, hour after hour, I educated myself in railroading and, incidentally, discovered many tricks of the railroad trade. Nightly coaching, by Loftus, enabled me, each following day, to locate and probe some sore spot in the anatomy of transportation. Giving rebates on trade paid by certain heavy shippers, an unfair and illegal practice, was an evil which railroad executives dared not admit and were afraid to deny. Jule M. Hannaford, the grand old Vice-President of the Northern Pacific, a self-made and ideal railroader, was asked bluntly:

“Has your road given any rebates since 1902?”

“If that question can be found to have any bearing on this case, I will answer it. If it has not, I'll be damned if I do.”

55

The weather was hot in early August of 1906. The court room was crowded. Severance had shed his suavity, if not his coat and, as his difficulties increased, had, in a dignified way, become quite irascible; while under the buffeting which I had invited by my blunders, I, too, had grown more and more contentious and belligerent.

I am no longer proud of my part in the clash that took place and I will tell it only for the lesson that it teaches, a lesson in temperance in speech, a lesson in court etiquette—or the lack of it.

Each witness, over my persistent objection, had testified from typewritten manuscript and introduced a mass of unverified statistics. I determined to make a clear-cut issue of it and demand a ruling. I made a motion to examine the Railroad books, or to throw out all the exhibits and documents on the ground that they were secondary evidence; that the accountants who made them and the books from which they were compiled were not produced for examination. Such secondary evidence, I remarked, was worthless.

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This motion and remark seemed to annoy the general counsel for the railroads. He protested, vigorously, including my clients in his attack on me, saying among other things:

“Who make up this Minnesota Shippers' Association? Nobody—there is no such organization. Loftus, alone, is responsible for this annoyance. His attorney is not in good faith coming in here and mussing up the record. 56 His motion to strike out our evidence is ridiculous. I have appeared before the Interstate Commerce Commission and know how to prepare such evidence. No real lawyer would make such a motion. It is not in good faith. And who, I ask, are the shippers objecting to our testimony? Nobody. And who is this man, Manahan? No one seems to know him.”

This reflection on my obscurity was the opening I had anticipated for several days. The taunt no doubt had been encouraged by my natural diffidence and timidity.

I made a short argument in support of my motion to strike the evidence or examine the books. Then I apologized to the commissioners for trespassing on their time, in replying to a personal attack. I would much prefer, I said, to give my entire attention to the public business of the trial, in the protection of my clients who were, I assured them, very real shippers, in absolute good faith. But Mr. Severance insisted on being personal, asking as he did, with a sneer, “Who is this man, Manahan?”

“That, I submit to the court, is the concern of my clients, only. I refuse to enlighten Mr. Severance.”

Then turning to him, as he sat across the table, I said, as deliberately as I could, “I will, however, tell you, now, personally, who I am *not*. I am not a pompous lawyer who seeks success in my profession by hanging on to the coat tails of abler men. I did not marry wealth, Mr. Severance, nor have I ever found it necessary, in order 57 to win or hold clients, to practice law in partnership with a dead man.”

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Mr. Severance's face turned white, but he said nothing.

The Commission ordered the railroads to submit their books to our examination, or have their laboriously prepared evidence thrown out. The newspapers featured the story of the clash between the lawyers. The reporters could understand a fight of any sort, while statistical tables were as obscure as Hindoo philosophy, to most of them. The general public reacted promptly, as to a sporting event. The world loves a scrapper.

Loftus, self-educated, was masterful in strategy. He argued that the public, being unorganized, was helpless under exploitation and could only be aroused, even to protect itself, by agitation and more agitation. He had spent most of his life in railroad service and knew how efficient the system was, especially in the exercise of influence of public men. The court room, crowded each day with high officials, executives, traffic experts and lawyers, was surcharged with railroad influence which the railroad commissioners, who were ordinary politicians, would find impossible to resist, unless we could create a counter-influence coming up from the public, generally. Publicity we considered as important as accountancy and just as legitimate an influence in deciding a public question. As some of my farmer clients might say, "The squeaky wheel gets the grease."

Having drawn an awakening attention to the rate 58 controversy by a personal clash with the railroads' chief counsel, I felt that I had scored a point, professionally, much as I regretted the quarrel as an individual.

### [ 3 ]

Armed with the order of the Commission authorizing me to examine the books of the railroads, I went to the general offices of the Great Northern, hunting for evidence. The legal department referred me to the office of Vice-President Farrington who introduced me to Colonel R. A. Wilkenson, a big bear of a man, sitting at a desk in the corner of the Vice-President's office. When I suggested that a time might be set when I could come

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and check over certain accounts and items I had in mind, they were evasive and non-committal, holding the conversation within the limits of casual visiting. When I persisted in my mission, Farrington suggested that if my clients had any grievance, he felt certain everything could be adjusted by a friendly conference. Would I not give him the names of the shippers I represented. I explained to him that the members of our association did not want their identity revealed to the railroads for fear of reprisals in the matter of service. He resented this and coldly asked who my “real” client was, who was “paying” me for making trouble.

I learned, afterwards, that, for a time, the notion prevailed that Harriman of the Union Pacific, the archenemy of Hill, was back of our fight to get at the books 59 of the Great Northern, but at the time, I knew nothing of the suspicion, so that I felt hurt and indignantly revealed other clients, saying, “Yes, Mr. Farrington, I do have other clients and they have paid me well. An old man in southern Minnesota and his sons and daughters toiled for years, on the old homestead, that I might be educated. I have learned that the railroads have robbed them by extortionate rates. I am their lawyers, now, and the stealing has got to stop.”

Farrington's expression changed; making a futile gesture with both hands, he said, “Manahan, you are a dreamer—impossible.”

Colonel Wilkenson was not a general counsel of the Great Northern in virtue of earned pre-eminence at the bar. He was, no doubt, a wise adviser in matters of legislation and, as contact man with political leaders, was efficient as a lobbyist. He would not offer nor even suggest a bribe, but the way to the mountain top was familiar to him. I remember, one day, after hearings were resumed by the Commission, during a lull in the proceedings, he invited me with beckoning finger and good-natured grin to come to the door. Stepping outside, I was buttonholed around the corner to hear the whispered question, “Say, Manahan, what do you want?”

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I said, "A general reduction of both merchandise and commodity rates."

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"But what do *you* want?" he repeated, with insinuating emphasis on "you."

I said something about not having any ambition beyond reducing the rates and returned to the hearing.

The publicity which he enjoyed, or endured, as the case might be, bore good and bad fruit, without discrimination—just as it happened—sometimes a hard knock made for us good friends, while, occasionally, deserved praise created a cool and envious hostility.

On the crowded platform of a street car, I overheard one man ask another, "How is business in the country, Bill?"

"Not so good, Joe. If that damn fool, Manahan, would only let the railroads alone, business would pick up, I think."

Presently, when "Bill" and his friend got off the car, a man leaning against the gate took his pipe out of his mouth to say, "When that old time-server knocks a guy he must be O. K."

I blushed my gratitude and embarrassment, as someone grunted an approving "Yaap," but no one seemed to know me.

On another occasion, I was walking alone on my way to the capitol, feeling, even at the very beginning of the day, tired and discouraged, having been reproached, at home, for having antagonized the "worth-while people," and thinking to myself, as I plodded along, "What's the use?" when I noticed an old man near the curb with the 61 shovel, broom and cart of a street sweeper. As I approached, he straightened up and his weary eyes met mine in seeming recognition. I tried to smile and he timidly asked, "You are James

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Manahan?" And when I said, "Yes, I am," the old man faltered these words, "Well, now, take care of yourself. We need you."

I think I said, "Thank you, I'll try." I know I went on, with my head a little higher. A new client! The words were in themselves, a fine fee! The fight was worth while, after all.

While we were skirmishing with the railroads as to what books and accounts we were entitled to examine, under the order of the Commission, I had an unexpected caller at my office, none other than the debonair, the redoubtable, Richard (Dick) O'Connor, western confidant of Tammany Hall and local political boss, a man high in the confidence of the House of Hill. I regret that I cannot express in words the calm assurance and the slight, but delightful, stutter in his voice, as he announced that he had just had a talk with "Louie" and the old "m-m-man" and had told them that my word was "g-g-good" and if I would say that I wouldn't take advantage of anything I might learn from the books, regarding their "p-p-personal" matters, there would be no objection to my examination.

I said my work was not personal, in any sense, that I had no grudges, but if I discovered anything that would help our case, of course, I would have to use it.

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This reservation was, evidently, not acceptable to Jim Hill. When I went again to the Great Northern offices, this time accompanied by Mr. Hinkley, an examiner of the Commission, we were, bluntly, denied access to the records and books we designated—profit and loss account, expenses of the legal department, etc.

When this rebuff was brought to the attention of the Commission by the report of Mr. Hinkley, its examiner, and by my application for a mandatory order against the railroad officials, directing them to appear with the books and be examined, the Board "took the bull by the horns," disregarded the evidence so carefully prepared and submitted by Mr.

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Severance and, peremptorily, on September 6, 1906, entered an order, establishing the lower schedule of rates on general merchandise, transported within the state.

This was a victory of no mean importance to the general public. Their attention had been caught by the newspaper account of the scrap between the attorneys. They knew a controversy was on. They may have realized that this victory cut the merchandise freight bill, of the people, over two million dollars, annually, as it did. But how many realized that this fact had any bearing on them? Freight was not a matter of immediate personal concern to the general consumer. Only a few realized that they pay freight whenever they make a purchase, be it of a ton of coal or a banana, and, as a consequence, very little appreciation was either felt or expressed.

### [ 4 ]

The railroad officials, however, knew and were sore. The general merchandise rates were reduced. This indisputable fact was a thorn in the flesh until, on September 19, 1906, the Railroad Commission reconvened to take testimony, not this time on merchandise, but rather on the commodity rates; freight charges for hauling coal, grain, lumber, livestock, etc., on the railroads, within the state. General merchandise, i.e., dry goods, was to be hauled cheaper than previously, but they would, so they thought, make up this loss by proving the necessity of an increase on the freight of large commodities.

Mr. Severance no longer represented all the railroads before the Commission, each road appearing by its own attorney. This insured a more diversified and interesting proceeding. The legal departments of the great transportation companies, at this time, had a number of unique and picturesque characters, especially among their old veterans.

For some two generations, as years run, Judge Thomas Wilson, still young and vigorous, in his eighties, was legal boss of the Omaha road, and capable, as ever, of seductive, Irish eloquence. By blarney and cajolery, "between ourselves, as old friends," Judge Wilson

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could commit sublime, grand larceny and steal the conscience of the court, with its glad consent.

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Very different in type and method sat Charles W. Bunn, silent and grim, with the head and front of a Roman Senator, at the head of the table in the legal department of the Northern Pacific system. His method was to overwhelm the court and jury, together with the opposition, by iron logic and authority, by dignity, respectability and solemnity—a pontifical lawyer.

But the most dangerous man in the legal hierarchy of the railroads was F. W. Root of the Milwaukee, a wiry whiffit of a man, as quick as a steel trap and as full of tricks as a Japanese wrestler. He was watched in vain, with both eyes.

Prior to the re-opening of the hearings on freight rates, I was put upon my guard by the friendly tip of a reporter who told me, in confidence, that he had learned that I was to be put out of the case, on some pretext, and then the attorney general of the state would take charge of the proceedings.

The attorney general, at this time, was Edward T. Young, a politician, sensitive to the mood of men of influence and power. My informant was correct. When Judge Mills convened the Commission the next morning, the attorney general of Minnesota was present and blandly announced that he appeared for the state and suggested that an adjournment of a couple of weeks should be taken to give the state and the railroads time to prepare their case.

If the combination of politicians and railroad lawyers <sup>65</sup> expected me to “fly off the handle” at this belated appearance and procrastinating gesture, they were disappointed. I simply made the counter suggestion that I welcomed the coming into the case of the state's attorney general, even at the eleventh hour, but inasmuch as the railroads, themselves, had not as yet asked for time, there was no occasion for any adjournment, that I had

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witnesses present and was ready to proceed. Whereupon, Judge Thomas Wilson rushed to the support of the attorney general, saying, with great solemnity, "This proceeding is without precedent, in any civilized nation on the face of the earth." Then pausing to let his solemnity soak in, he continued sagely, "I have always held that when this Commission, on its own initiation, takes up a matter for investigation, the railroads should, at least, be served with a list of the rates challenged, so that we may know what issues to meet. Even if there was no statute to govern the Commissioners, as honest men," and he paused again, to stress their honesty, "as honest men, they should first give us a chance to know what we are trying."

Nothing the concert of purpose between the law officers of the state and the lawyers of the transportation companies, I unwisely observed that the state and railroads were friendly enemies, willing to give each other unlimited time to prepare the case against each other; following the ancient custom of old horses, "you scratch my back and I will scratch yours."

66

I was rebuked by Judge Mills who expressed a warning to all the lawyers that the Commission would not tolerate any personal bickering between them. The application for an adjournment was denied and I was directed to proceed. Vice-President P. L. Day of the Minneapolis and St. Louis Railroad, a dapper little man with carefully waxed mustache, was reluctant and evasive in his testimony. Had his company violated the law by paying rebates on freight bills to favored shippers?

"Certainly not," with great indignation.

When confronted with the report of the public examiner, showing that, in the last three years, \$171,750.00 had been paid out in drafts payable to the Company's general counsel, of which \$38,076.15 was indorsed by the road's freight traffic manager, and withdrawn from taxation as unearned revenue, he could not explain. Over thirty-eight thousand was neither taxed nor recorded, which indicated clearly, that it was a rebate by the freight traffic

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manager. To all appearances, thirty-eight thousand was knocked off the freight in favor of certain shippers. There was no way of tracing this amount since the records and files had been destroyed “to make room.”

“What salary do you draw, Mr. Day?” Lawyers objected, “immaterial,” and Root of the Milwaukee system shouted, “If Day received a salary of a million dollars a year, this Commission has no jurisdiction.”

“What is your yearly salary, Mr. Day,” I persisted. More objections—“overruled.”

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“Fifty thousand,” Day answered, with indignation.

Some days later, and after a number of other witnesses had been examined, with indifferent success, late in the afternoon and during a lull in the proceedings, one of the reporters came around the table and leaning over my shoulder said in a low voice, “For God's sake, Manahan, do something. Wake them up.”

“Why? What's the matter?” I asked.

He leaned closer and said, “We can't make a story out of these damn rates—per ton per mile statistics. We'll lose our jobs.”

I grinned my sympathy and the bright young man whispered, “Prod'em. Make'em squirm. Start a fight. Anything for a story.”

I said, “Make your own trouble,” and called to the witness stand, A. W. Trenholm, General Manager of the Omaha Railroad, who, as Loftus told me, would not lie. I started to question him about the traffic of his company, but could not forget the request of the reporters for “a story.” They had been good to me. My uphill fight, against big odds, had won their sympathy. Besides that, our cause needed wide publicity. It suddenly occurred to me that politics always makes good news matter. I abruptly switched my line of inquiry and

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bluntly asked, "Has your company ever made any political contributions or used money for campaign purposes?"

The railroad lawyers were asleep, or perhaps thought that the witness would answer with an indignant negative. 68 In any event, no objection to my question was interposed and Mr. Trenholm answered, "Yes, I believe such has been the case and that we have paid a few expenses of that kind, but not in Minnesota."

Of course, I knew that if it was not in Minnesota, it must have been in Wisconsin. So I said, "Mr. Trenholm, did not your company send its agents to Wisconsin with money to defeat LaFollette in his last campaign and charge up the cost as an operating expense?"

By this time the Commissioners, as well as the lawyers, were wide awake. Judge Mills asked the official stenographer to read the last answer made by the witness. He could hardly believe his ears.

Attorney Sheehan of the Omaha staff vehemently objected to any inquiry into political contributions. Judge, with equal vehemence, sustained the railroad's objection, glaring at me in alarm and fear, as if I had committed an unpardonable sacrilege. But I was not perturbed. I knew that my random shot had struck home. The fatal admission in the answer, already made, had opened the door to vital evidence and I instinctively thrust my big foot across the threshold to hold it open.

"I ask the Commission to reconsider its action, in ruling out my question," I said quietly, but Judge Mills sharply replied, "The Commission has ruled to sustain the objection and we mean to stand by our ruling."

"May it please the Commission," I pleaded, "I desire to be heard on this ruling."

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“We won't have it, sit down, Mr. Manahan, sit down.” Judge Mills shouted, striking the table with his fist. I sat down, but stood up again, presently, and said with some indignation, “I have a right to be heard in this matter. If this company, represented by Mr. Trenholm, is spending its money against Senator LaFollette, who has the courage to oppose railroad domination and tyranny, it is proper for me to ask that question.”

Judge Mills replied that “the question is material, only as to the amount of money so spent.”

I resumed, saying, “The testimony of Mr. Trenholm shows that his company goes into politics. It spends its money, freely, to elect or defeat men running for office, and I respectfully submit that, if these railroads unlawfully use the money paid, by the people, for transportation, it is your duty to learn the details and the question is a proper one, in the administration of the law.”

“Now, I object to all this,” declared Mr. Sheehan. “Mr. Manahan is not running for Congress in Nebraska, as he was when I first met him. I think he has read enough into the notes of the reporters for their morning edition and it all ought to stop.”

George Loftus then called upon Mr. Sheehan to sit down and let Manahan talk. Judge Mills rebuked Mr. Loftus, telling that the Commission was able to conduct the hearing, without his assistance and directing him to “keep his own counsel.”

Loftus' impulsive desire to help me and the chastisement it brought down upon me, moved me, I think, to deeper indignation, than had the reflection upon my own sincerity of purpose. I was mad clear through. I said, “I desire to state, emphatically, before those present, in particular the Commission, that I am not a candidate for office or any railroad job, nor do I look for honors of any sort. I stand, here, simply as a lawyer, representing to the best of my ability the shippers of this state. We believe that the railroad companies are not giving the public a square deal. They collect large sums, in high rates, and we have

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a right to know where that money is spent and when it is spent and for what purposes. Let us clear up the atmosphere in Minnesota, where that railroad companies have, with money, defeated honest candidates for public office. Who knows, today, whether the capitol of Minnesota is located in this beautiful, marble building, on the hills, or down in the valley on Fourth Street, in the sordid offices of the Great Northern, or Omaha railroads?"

At this, every man in the room was on his feet. Loftus came to my side, stopping me to whisper, "Look out, Jim, they'll mob you." Judge Mills cried out, "Sit down! Sit down! Everyone sit down!"

Commissioner Staples, hurriedly, moved to adjourn. The tension relaxed, but everyone continued to scowl except the reporters. They were too busy, scribbling furiously. Their story was front page stuff, for all the 71 leading newspapers. But I was not mobbed for many years to come.

### [ 5 ]

Robert M. LaFollette, a Wisconsin man geographically, was a national figure in statesmanship and a world force in character. His personal influence was felt in the Northwestern states, especially on account of their economic ties with Wisconsin. The politicians of the Northwest, enjoying the confidence and support of powerful men and serving their business needs in government, feared and hated the Wisconsin leader and his statesmanship. His success, and the legislation he fathered, made the exploitation of Minnesota and her people more difficult. He was to the politicians and to their masters, a dangerous man and the legislation he advocated was—whispered—"socialism." Hence, the excitement and dismay over the revelation that the great, Northwestern Railway system, through its Omaha branch manager, had, unlawfully, been spending its money to crush LaFollette, politically.

When the Commission reconvened, I offered to prove by Mr. Trenholm, the general manager, as Loftus had ascertained during the recess, that Solon Perrin, the special

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attorney for the company at Superior, Wisconsin, had devoted several months of his time and spent large sums of the railroad's money fighting LaFollette, in his campaign for Governor of Wisconsin, but the witness 72 was not permitted to answer, in so far as the question referred to LaFollette. However, the witness did admit that he had given leave of absence to a large number of old employees, in Minnesota, and sent them to Wisconsin to take part in the campaign when Senator LaFollette was running for governor and that the expense bills of these men, for money spent by them, in campaigning, were paid, by the company, and charged up as expenses of operation. Obviously a fraudulent entry, involving false bookkeeping, but at the time, I did not fully appreciate its significance. Things were happening, so fast, with me, at the time, that I could not keep up with myself. When I demanded of the railroads the production of the original vouchers and records, showing how political disbursements were entered on the books, one facetious reporter remarked, aside, that the "yellow dog" account probably disclosed a purchase of "steel," accidentally misspelled, by the bookkeeper. But a veteran scribe thought otherwise. He said "old ties" would correctly describe the disbursements and, as old ties, the innocent examiner would think the money was spent for old logs used repairing tracks.

I persisted, in vain, in my efforts to compel the Omaha Railroad to reveal the account in which its political disbursements were entered. It was a pertinent inquiry. We were investigating the reasonableness of rates charged for transportation service and that depended largely on what was left, after operating expenses were

James Manahan and George Loftus

73 paid out of earnings. Every item of operating cost, therefore, was the subject of scrutiny and examination. While I had, in my arguments to the Commission, characterized the expenditure of railroad money, in political campaigns, as a crime, its more profound significance as an act of treason, in a self-governing republic had quite escaped me. I persisted more because the Commission and the railroads, alike, were frantic in their opposition. Even Attorney General Young, a tough-skinned politician, was pathetic, in his zeal to talk of something else. Apparently, it sounded like the Day of Judgment to the

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politicians when I announced that evidence of railroad political corruption in Wisconsin made it imperative for us to put our own house in order, because everybody knew that for every dollar spent, by the little Omaha road, in Wisconsin, the Great Northern could and perhaps did spend a thousand in Minnesota. Then I demanded a subpoena for James J. Hill, as a witness. This was going too far—bad—very bad—outrageous—dragging the “Empire Builder,” himself, into court, like an ordinary witness. But an election was coming on, shortly, and the subpoena for Jim Hill was issued. I handed this subpoena to the sheriff for immediate service on Mr. Hill and confidently expected to examine that railroad magnate on the following day. But the sheriff reported that he could not find Mr. Hill who, shortly thereafter, as the newspaper announced, was called to New York to attend a conference of bankers. I was beginning to learn that there was something sort of sacred about the person of Jim Hill that stayed the so-called strong arm of the law; an aura that dazzled thread-bare office holders, compelling everyone in his presence to be quite reverently respectful; of such queer stuff are mortals made that sheriffs could not find him and Attorneys General of great states were, obediently, glad to “kiss his ring.”

My efforts to compel railroad officials to disclose their political contributions were unbearable to the state house machine, leading members of which, at the time, were running for office. The Commission adjourned to continue the investigation in November, after the elections. I did not, as a lawyer, realize the ominous significance of the adjournment.

When notified by the secretary that the Commission would resume its hearing in November, 1906, I caused two subpoenas to be issued to compel Mr. Hill's attendance as a witness. One of these subpoenas I gave to the sheriff to serve, but fearing that Hill's halo would make the empire builder invisible to the official eyes of that functionary, I handed the duplicate copy to a private detective, with a ten dollar bill, telling him I wanted it served on Hill, personally, even if he had to stay up all night to do it. I paid him too much. He walked down to the railroad office and made legal service in about ten minutes.

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The day before Mr. Hill was to appear and be examined as a witness, a newspaper reporter came to my 75 office and under pledge of secrecy, told me he had just learned that I would not be permitted to ask Mr. Hill any questions, on any subject

“Where did you get that story?” I asked.

“Well, it's like this,” he said, “it seems that Hill sent word up to the capitol, yesterday, that, if you cross-examined him on political contributions, he would tell just who had been holding him up and would protect no one.” And he said, as Hill, himself, expressed, “The lid will be off. There will be the greatest rattling of old bones ever heard in Minnesota.”

“And so they are going to put the skids on me,” I mused.

“Yep, that's the ticket, but can they?” he grinned.

“No, they can't,” I replied, “Hill is my witness. I will examine him tomorrow, if I live.”

Well, I lived, but I did not ask Mr. Hill a question. Yes, he was there and I was there and the Commissioners were there and the great mahogany court room was crowded with eager listeners.

On one side of the long table, with a cynical smile on his strong and bewhiskered face, in complacent ease, sat the great railroad magnate and super boss of the political Northwest. His digestion was good that morning. His conscience was clear and his obvious contempt for the other actors in the inquisition was overflowing but good-natured.

Across the table from Mr. Hill, but never looking at 76 him, Edward T. Young, the attorney general, with all the ceremonial dignity of an undertaker, busied himself with his files and looked solemn. His, the sad business of burying alive an incorrigible lawyer who had threatened to ask disagreeable questions of the great lord and master of transportation. The Commission, itself, huddled around the end of the table, seemed dwarfed and distant

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in the presence of the great, as though seen through opera glasses, held wrong end to, diminutive figures making futile, little movements.

Presently, at ten o'clock, as a quiet tension settled upon the room, I anticipated the first move in their program by standing up and challenging the right of the attorney general to interfere with my right to subpoena any witness I saw fit.

Attorney General Young interrupted me to say, "If Mr. Manahan wants to make a speech, let him hire a hall. We ought to go on with this business, here."

I said, "I am not here to make a speech. This is too serious a matter to be treated in this way. I am not an outsider, in this case, as the attorney general suggests. If I am I want to know it, now."

To this direct challenge, the chairman of the Commission, Judge Mills, his face drawn and haggard, his hands trembling, his voice scarcely audible, in pitiful humiliation, said, "Mr. Manahan, the Attorney General is now in the case and he will take charge of the examination of the witnesses. The Attorney General will examine 77 any witness that may be material for any party, whether it be for the Shippers Association, or anyone else. He has expressed his willingness to do so. Mr. Attorney General, you may proceed with the hearing and call your witness."

Against this exclusion I remonstrated, claiming that I could not yield my right to present my client's case. While I was objecting to the Attorney General's usurpation of my rights, James J. Hill was sworn and an attempt was made to examine him. The Commission rebuked me for interrupting the proceedings with the words that the case was in the hands of the attorney general under the holding of the Commission. I reiterated my plea stating that my clients refused to have the attorney general represent them in this hearing. "At the last meeting," I continued, "an application was made to compel the Omaha Railroad to produce certain accounts which has never been acted upon. Now an effort is being made to exclude me, entirely, from the case. Moreover, Mr. Hill is my witness. I want to show by

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Mr. Hill what it costs to haul freight. I want to show, by him, many pertinent facts and no impertinent facts.”

I then demanded a formal order recognizing us as parties. The Commissioner refused me, point blank, telling the attorney general to proceed.

The examination of Mr. Hill by Attorney General Young, lasting for several hours, was a polite affair. Elementary questions regarding transportation were 78 asked by Mr. Young, in an affable manner, and, smilingly, answered by the Empire Builder. No attempt was made to show that the earnings and traffic of the Great Northern Railroad justified a reduction in rates. The inquisition was more like an informal gathering of friends, interested in railroading and, as it progressed, I became more and more indignant.

When the Commission paused for lunch and recess, I asked whether I would be permitted to cross-examine Mr. Hill, after the attorney general had concluded his examination; whereupon the verbal encounter of the morning was resumed, as shown from the following notes taken from the transcript:

“Mr. Manahan;—‘I believe your refusal to give me the right to cross-examine him at this time is a flagrant and glaring attempt, inspired by fear, perhaps of Mr. Hill, to protect him from a cross-examination on questions that are not entirely congenial to him.

“And I am going to ask the Commission and keep on asking it to give us an opportunity to try our cases right; to have any witness that we want; to examine them as we see fit, to bring such facts and such records and books before this commission as will show the truth and nothing but the truth.

“Why, this morning, Mr. Hill said that the Great Northern is the target of demagogues in this state and neither the attorney general nor the Commission had the courage to ask him to whom he referred.

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“Was it a slam at the Commission for having him in here to make him testify as to his railway?”

“Was it a slam at the attorney general because he permitted himself to be forced by us to examine him and never otherwise would?”

“Why may it please the commission, this action of yours refusing me the right to cross-examine this witness is unjust to me; it is unjust to the shippers of this state; it is unjust to the people of Minnesota; it is unfair; it is a cringing to the power of the Great Northern railroad and Mr. Hill.

“I say it boldly and to the face of this Commission.

“It is a cringing and a contemptible cringing, at that, and I brand it as an infamy and an outrage;—I don't blame Judge Mills for not having the courage to listen to me, because I want to ask Mr. Hill who are the demagogues in this state; how much he and his railroad have contributed, if anything, to elect men to office in this state and I want the answer. I don't care whether it points the finger of scorn at any member of this Commission, or the attorney general, or the governor, or anybody else.

“I want the truth and I am going to have the truth in this investigation, if I live, before we conclude with it. I want the right to cross-examine Mr. Hill. Why do you deny that right to me in this case and not in the case of any other witness who has ever appeared here?”

“Heretofore it has been announced, time and again, 80 that any witness could be examined and cross-examined by anybody. Why is the mantle of protection thrown around Mr. Hill, that he shall not be subject to cross-examination?”

“Why, Commissioner Staples, you sit silent now, but before election you did not dare to take the position you take today, of refusing me the right to be heard here and a right to cross-examine witnesses.

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“And Judge Mills sneaks out of the room when an attorney asks for a plain right, the right to cross-examine a witness, the right to be heard in a public case where millions are involved and the people are being unjustly treated.

“And I tell you, Commissioner Staples, that it is not right, it is not fair, it is not honest, and I tell you further, that I am going to present these facts, that we have been refused a right to be heard in this hearing;—that we have been refused the right to cross-examine this witness—I am going to lay these facts before the governor of this state and demand of him right action in the matter; and submit it to him at the very earliest opportunity. If you want to be heard, Commissioner Staples, or anybody else on this Commission, I will give you an opportunity to be heard before him.”

### [ 6 ]

The Commission, behind closed doors, and without citation or notice to me, made an order disbaring me 81 from practicing before it. This disbarment was widely published, much to my discomfiture.

And no one, so far as I can learn, ever asked James J. Hill how much money, if any, he or the Great Northern Railroad spent in politics or on politicians. Certainly, no answer to this question was ever put on record by the Commission or the Attorney General of the State of Minnesota, and no public answer was ever elicited from James J. Hill.

### [ 7 ]

In the days following my disbarment by the Railroad Commission, my reaction was one of bewilderment, not of bitterness. I could not, at first, understand its significance. The order of disbarment was void on its face, having been made without notice, or hearing, and in my absence. It was not intended, evidently, to have any legal effect. I had attacked the Commission for its servility to Hill and the Commission had struck back. Perhaps, from the ordinary standpoint, judged by the rule of “tit for tat,” what I had done merited drastic

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and unprecedented action. But my offending had been by words, alone, spoken in protest and comment on the exclusion of my clients. The quarrel was between officers of the state and myself as a lawyer, but the arena of contest was not confined to the statehouse. Newspaper publishers distorted the reports turned in by their own reporters and then wrote savage editorials on these distorted 82 reports condemning me as “trouble maker.” I had, I think, at that time, enough common sense to realize that the wrong I had sustained and the hostility I endured were not strictly personal to me. Whether I lived or died, as an individual, or survived or perished as a lawyer, was of little or no concern to the men who directed and controlled mundane affairs in Minnesota. They were not trying to hurt any individual, as it readily occurred to me, unless it became necessary, in protecting themselves, or in holding what they considered their rights and privileges.

But what had I done? What was I trying to do that made me, apparently, to them, such a dangerous man? I asked my friend, Loftus, “Why was I banished from Rome, George?”

My historical allusions were always of great interest to George. “Rome?” he asked, with a puzzled look on his handsome face. Not claiming to be informed in the matter of book-learning, but sensing my meaning, like a flash, he answered in one word, “Money.”

It was my turn to be puzzled and to inquire, “Money, how so?”

And he replied, “Of course, I don't mean that anyone paid or anyone received any money for kicking us out of the case, but millions in good old Uncle Samuel's iron dollars were at stake and the pirates knew it.”

“You are getting your metaphors mixed, George,” I said, “but never mind, if there were oodles of money in 83 that case, I didn't see much of it. Where was it hidden, I would like to know?”

“Rates, can't you see it, Jim? Millions in rates.”

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"I know we were investigating the freight rates," I replied, "but—"

Loftus interrupted—"the commissions fix the rates. If they are raised, quite obviously, more money flows into the pockets of the railroads' owners and if the rates are lowered, less money is collected."

"In effect, the railroad revenue is determined by the Government?"

"Yes, that is why the railroads seek to control the State Commissions. I tell you there is millions in that control." After some reflection, I observed, "That is too much power to put in the hands of three or four small salaried politicians. Poor weak human nature is bound to melt under such terrific pressure."

"But how can you avoid the temptation that goes with control?" Loftus replied. "If you leave rate making to railroad officers, they will charge all the traffic can stand. On the other hand the Commissions, set up by the State to assist in setting the rates, are comparatively easy to influence. Would you be in favor of *government* ownership of railroads as an alternative?"

I hesitated, but said, "I don't know. Government ownership of transportation by rail sounds like socialism and, I am afraid, would encourage inefficiency and become hopelessly bureaucratic."

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"How about Uncle Sam's Postal service?" replied Loftus, with a merry twinkle in his big brown eyes. He knew he had me cornered and resumed, confidently, "Our mail service is efficient; the rates are low and the civil service rules have kept postal employees out of politics."

"I will admit," I conceded, "that private ownership has not kept the railroads out of politics."

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“Of course not,” said Loftus, “How could you expect it when you give to public regulation, by politicians, the power to measure the private profits of the owners? For fat dividends, the capitalist just has to regulate the regulators, or go broke.”

“I am half persuaded that you are right, but taxes are too heavy, now. What would they be, if the government borrowed billions more to raise money to buy the railroads?”

Loftus was silent, a moment, before answering by asking, “Who pays, now, for the money borrowed to buy or build the railroads?”

I answered, promptly, “The freight payers.”

“And who are they?” he asked.

“Oh, I know the answer,” I said, “Producer or consumer, either or both, always pay the freight, on what is transported.”

“Sure thing,” said George, with an engaging smile. “The same people pay the freight, no matter who owns the roads, Wall Street, or Uncle Sam. It is simply a matter of taxation, under either system.”

“Taxation,” I argued, “is the taking of money, for public purposes.”

“Transportation is public,” he countered and asked, “What is the difference between raising money to maintain a dirt road for farm wagons, by taxes, and raising money to maintain an iron road for box cars, by freight rates?”

“There is no difference, in principle,” I admitted. “In either case, it is taxation.”

“Sounds more like ‘damnation’ when levied and collected for the private enrichment of individuals, over and beyond the public purpose of transportation.”

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“Yes, the reason why railroad magnates tried to destroy LaFollette, in Wisconsin, is obvious enough when one considers it, in cold-blooded terms of money-making.”

“And corporate greed for more and more money explains why we ‘met our Waterloo’ before the Railroad Commission.”

“Well, we stirred up the animals, anyhow. The country papers have taken up the fight—mostly on our side. The legislature this winter, will finish it, if we furnish the ammunition.”

### [ 8 ]

Before the legislature met, Loftus had conferred with prominent and progressive members and, with them, 86 planned the campaign for legislative relief. These plans contemplated action along two lines. The value of the railroads and the cost of their operation, in Minnesota, was to be investigated by a Committee of the Senate. Maximum rates, freight and passenger, were to be fixed by law. The rates, of course, to depend, in a measure, on the values of the roads and their earnings.

The valuation committee was appointed, at the suggestion of Mr. Loftus, consisting of Senators Benjamin Sunberg, Ole Canesthorp, Ole Sageng, Sam Nelson and Thomas Cashman.

“Mostly Scandinavian,” reported Loftus, to me, “and awfully stubborn, when they are on the right track.”

The committee retained me, as its attorney, to examine the witnesses and present the evidence. Public sessions, attended by many of the other members of the House and Senate, were held, for many weeks, and valuable data, on the railroads, of the state, was submitted to the committee and reported by it, to the Senate.

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Early in the legislative session, the railroad companies, interested, were invited to furnish the committee such evidence as they had to show the cost and value of their lines in Minnesota. Many railroad officials were examined and detailed statements from their company's books and reports were obtained and examined. Contractors who built different roads and civil engineers who were familiar with them testified and submitted 87 estimates of the cost of construction, in former years and under present conditions.

The hearings before the Senate committee lacked in dramatic interest when compared with the contentious sessions before the Railroad and Warehouse Commission in the investigation of freight rates. The Scandinavian complexion of the Senate committee created a solemn and church-like atmosphere in the committee room. The Chairman, Senator Benjamin Sundberg, was of Viking type, a rugged old blond, big and tall, his homely face partly concealed by an untrained mustache and goatee—a natural born magistrate, under whose rulings technical lawyers were quite helpless.

Early in the session an incident, amusing to lawyers, at least, took place and revealed the point of view of the committee and the distress of my legal adversaries.

An official of the Northern Pacific was testifying, reluctantly, as I thought, regarding the reported merger of his company with the Great Northern, and I was attempting to force admissions which he would not, or perhaps could not, make. Naturally, in my eager questioning, I asked about some things that were outside of the strictly technical scope of the investigation and, of course, Mr. Hadley, for the Northern Pacific Railroad, promptly objected. The committee sat silent and unperturbed. I waited and waited for a ruling on the objection, but Senator Sundberg was a sphinx. After a long time, I broke the tension by saying, "Could we have a ruling on the objection, Mr. Chairman?"

"Well, Meester Manahan, what do you think about it?"

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"I think the objection should be overruled," I promptly said and thereupon, Senator Sundberg turned to Mr. Hadley and gravely announced:

"Our lawyer thinks your objection should be overruled," and then, to be polite and soften the blow, the old farmer benignantly smiled on the irritated railroad attorney and said to him, "You know, Meester Heedly, we must stand by our lawyer."

"In the meantime, public opinion, thoroughly aroused by the disclosures made before the railroad commission and my disbarment, by that body, and stimulated by the facts developed, from day to day, by the Sundberg valuation committee, forced the legislature to pass an act fixing maximum rates for the transportation of the principal commodities and a law reducing the passenger rates within the state to two cents per mile.

The merchandise freight rates had been reduced by the Railroad and Warehouse Commission's ruling in favor of the Shippers Association. The commodity freight rates were reduced by a legislative act, in spite of the continued refusal to listen of the House of Hill. Apparently the power of the railroads to collect unfair taxes from the people of Minnesota for the public purpose of transportation had been effectually and sternly 89 curbed. Mr. Loftus, who led the fight was jubilant. The railroads, themselves, made a gesture of submission. I thought that the people of the state had won a great and permanent victory, but I had underestimated the guile and resourcefulness of those builders of empire who owned the railroads. Minnesota might be determined to establish and enforce fairer rates for her people and the railroad officials might, like good citizens, answer "Amen," to the mandate of the state. But hark! There is a voice stronger and more sovereign than that of any great state—the voice of the nation. And there is a power behind and supreme over the railroad officials. Stockholders, as owners, with offices on Wall Street and outside the jurisdiction of the state can veto their own officers' compliance with the state's laws and can challenge the power of state officers to enforce those laws.

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The device or process by which certain stockholders of the railroads made their dissent effective and checkmated the shippers and people of Minnesota, might be called a friendly suit, inasmuch as they sued their own company in the United States Court, joining in the action, Edward T. Young, Attorney General of the State, and asking for an injunction against both, enjoining them from enforcing the new rates on the grounds of confiscation, interference with interstate commerce and excessive penalties and resulting in a deprivation of property without due process of law.<sup>1</sup> This last attempt

<sup>1</sup> 209 U. S. 123, 184 Fed. 765.

90 to hold back the Shippers Association and their attorney would have exhausted the patience of Job. It was accepted, however, as simply another example of the dogged determination of the railroad never to give in to the general public and their representatives in the matter of freight rates.

In due course of legal procedure, the United States Circuit Court appointed a special master, so-called, to take the testimony in this case and report his conclusions on the facts in controversy. The special master took a lot of testimony and in his report to the court sustained the contention of the stockholders. He placed a valuation on the railroads far in excess of that found by the Sundberg Senate committee. The value of the property engaged in the business being of vital importance on the question of confiscation, under the rates involved, it is interesting to consider the methods employed in the lawsuit by the special master with those used by the Senate investigating committee and then compare results. The special master listened to the opinions of real estate agents who, as appraisers, testified, before him, and on such evidence found that, for land for right-of-way, yards and terminals of the Great Northern Railroad alone, an allowance of over twenty-five million should be allowed and that the cost of reproduction, of the entire system, was \$457,121,469.00 and of the Minnesota part was \$138,425,291.00.

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The Sundberg Senate Committee, on the other hand, 91 ignoring the opinion of real estate experts as experts, took the testimony of the man who built the system and knew its cost better than anyone living.

Mr. James J. Hill testified<sup>2</sup> that his road represented an investment, not considering “our outside property, that is not a part of the railroad, like our elevators and our ships and outside coal mines and property of that description and timber lands, somewhere in the neighborhood of \$36,000 per mile.”

<sup>2</sup> Page 229 of the transcript reported to the Senate.

Mr. Hill also testified<sup>3</sup> that in addition to this his company had put into the road, out of its surplus earnings and land grant funds “about \$6,000 a mile more.” And he testified, further,<sup>4</sup> “That the lines out in the mountains were very expensive to build and cost approximately \$60,000 per mile for the western two thousand miles of the system.”

<sup>3</sup> Page 230 of the transcript reported to the Senate.

<sup>4</sup> Page 289 of the transcript reported to the Senate.

The Sundberg committee's report to the Senate, on Hill's testimony, summarized that testimony as follows:

The entire line, 5,018 miles, cost \$43,000 per mile, which makes \$215,774,000.

The western end, 2,000 miles, cost \$60,000 per mile, which makes \$120,000,000.

This leaves, as the cost, for the balance of the system, 3,018 miles, \$95,774,000 or \$31,754.27 per mile.

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The report of the Sundberg committee said, "This 3,018 miles covers the road in Minnesota and most of 92 the Dakotas, and, of course, includes equipment and the terminals in the Twin Cities and Duluth.<sup>5</sup> The cost of this is distributed as we think it should be, over the mileage of Dakota, as well as Minnesota."

<sup>5</sup> Page 233 of the transcript reported to the Senate.

Considering the higher cost of all materials in Dakota, as well as the character of the soil and lay of the land, the cost of a railroad building, there, is, practically, the same as in this state. A large part of the equipment, the cost of which goes to make up this investment of \$31,734.27 per mile of line in Minnesota and Dakota, does not now exist.<sup>6</sup> The old Manitoba and Eastern Minnesota equipment is long since in the scrap pile and yet it cost about \$15,000,000, approximately \$3,000 per mile. The rails, ties and buildings are all, more or less depreciated, in value, by the lapse of time. Your committee is of the opinion that depreciation and wear offsets to a large extent the increase in the price of labor and material and that the property of the Great Northern in Minnesota and Dakota could be reproduced in its present condition for about 5 per cent more than it cost, originally, to-wit, \$33,000 per mile."

<sup>6</sup> Page 264 of the transcript reported to the Senate.

The foregoing figures compared with the findings of the special master in the lawsuit are significant.

### **As shown by the special master:**

Special Master—Entire system, cost of reproduction \$457,121,469.00

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Actual cost as shown by Hill's testimony of entire system 215,774,000.00

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As shown by the findings and report of the Senate Committee 165,594,000.00

And for the State of Minnesota:

Special Master's report \$138,425,291.00

Under Hill's testimony 64,778,160.00

As shown by the Senate Committee, Minnesota value 67,320,000.00

It will be observed that the special master in the Circuit Court of the United States, in determining the cost of reproduction, new, of the entire system, as well as of the portion of the system in Minnesota determined it to be approximately double what the railroad actually cost to build and equip according to Hill's testimony and approximately double what the Sundberg Senate Committee of the State of Minnesota found to be the actual value of the road.

The Legislature passed a bill giving freight payers relief. Prior to that the Railroad and Warehouse Commission made a ruling in their favor. A Special Master took a real estate agent's testimony appraising the value of the railroad. A Senate Committee valued them by testimony of their owners. The final result of the railroad legislation and the litigation growing out of it proved to be quite fruitless in spite of these various committees of investigation, so far as the state of Minnesota was concerned. The penalties provided for enforcing 94 the rates prescribed by the legislature were held unconstitutional. The two cents per mile passenger rates were discontinued and the old rates restored. The enactment of rates between stations within the state, that would interfere with interstate rates across the borders, was condemned as a burden on interstate commerce. There was a temporary benefit in the amount of two million dollars (\$2,000,000), to the freight payers. The railroads sustained this loss, but with bull dog tenacity they refused to surrender any real right to determine rates to the state of Minnesota or any commission or committee

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appointed thereby. The state was found to be quite impotent and shorn of real power to protect its citizens on the question of unreasonable charges and rates for transportation.

Mr. Loftus finally admitted that there was not much hope for relief. The state was too weak. The railroads were too powerful. Washington was the only hope for relief. We abandoned any further attempt within the state to lower freight rates. The National Government was the stage for our next endeavor.

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### CHAPTER III CAMPAIGNING

[ 1 ]

DURING the period covered by the railroad investigations described in the foregoing pages and while Bryan was still in the ascendancy in Nebraska, John A. Johnson was governor of Minnesota. A lovable and tactful man, a brilliant and adaptable politician, with a sympathy moving story of hardships bravely borne in youth. Johnson had built a political machine about himself that threatened republican supremacy in the northwest. Many of his followers were ardent young men, without any knowledge of government or economics, who automatically fell under the spell of his magnetic oratory. They did not know, or care, what he stood for as governor. They stood for him. They loved him as a leader. But the Johnson party had as guiding spirits, close to the throne, a strong phalanx of seasoned politicians. These old veterans, under the astute leadership of Dick O'Connor, the political boss of St. Paul, saw in their youthful and Swedish governor, of humble origin, great political possibilities, with one end of their rainbow resting on the White House in Washington. As Dick O'Connor, democrats, it was easy for the Johnson political machine to maintain close contact with the Hill Railroad 96 machine, which reached the front door of Wall Street and the back door of Tammany Hall, without disturbing the obviously sound strategy of posing Johnson as a reformer in sympathy with the struggling masses. The governor himself coyly admitted the unfounded claims of his supporters that he reduced

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the railroad freight and passenger rates and passed the anti-rebate law. These claims did not disturb the serenity of the empire builder in the House of Hill. He never displayed any nervousness, or even a casual concern as to the attitude of Governor Johnson on transportation questions.

As the time approached for grooming candidates for the presidential campaign of 1908, the supporters of Governor Johnson in Minnesota, succeeded in interesting many democratic bosses like Tom Taggart of Indiana, Roger Sullivan of Chicago and the “big fellows” of Tammany Hall, New York.

The Democratic leaders of the country, especially those outside of the “solid South,” so-called, had never been enthusiastically for Bryan, although rendering him lip service for the sake of party regularity. These old line leaders also, saw in Governor Johnson—a pleasant radical, a magnetic vote getter—not dangerous as a reformer—an antidote for Bryanism—and, withal, a chance to capture the Democratic National Convention to be held at Denver, Colorado in July. “Johnson for President” headquarters were established in New York City and Chicago and a broad campaign of favorable 97 publicity launched from coast to coast. The Bryan men caught the rebound and were concerned, but, as I thought, not sufficiently alarmed. I had learned, in the Railroad investigations, something of the mighty stakes in money and power involved in the practical game of politics. And I had discovered, also, the sinister triangle in the concealed relationship that existed between Hill, railroad magnate, Dick O'Connor, political boss, and Johnson, Minnesota governor and presidential possibility. It seemed to be my plain duty, although I knew the task would create deep enmities, to openly fight the Johnson boom.

North Dakota was one of the states to hold an early convention and I heard the rumor that the Johnson organization expected to get an endorsement for “Minnesota's favorite son by her next door neighbor.” I attended the North Dakota convention which was held in Grand Forks, arriving early one morning in March. The yeomanry of North Dakota are notoriously early risers and I had no difficulty in locating a group of ardent Bryan men among the

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waiting delegates milling around in the lobby of the hotel. I warned these men against the danger of the convention being stampeded by the Johnson organization, telling them to be on guard especially against what I called the “spell-binding” of the old machine politicians and railroad lawyers. “If they make speeches for Johnson,” I said, “I will talk for Bryan as an old neighbor.”

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“Maybe they won't let ye talk at all, at all,” suggested a cheerful red-faced mick with a ready grin. “They do be a hard bunch, the ould gang.”

“No, they won't stop me from making a speech if you boys only holler loud enough and keep on hollering. Just shout Manahan, Manahan, speech! Let them make their Johnson orations first, and then when I give the signal, call out loud and long for me and I will do the rest.”

Before the convention opened, I recognized but one man on the stage and he was a Minnesota man, and a loyal friend of mine. As political observer of the *Minneapolis Tribune* at the time, George Authier was covering the convention and had, of course, a seat at one of the reporters' tables.

I found my way to the platform to ask Authier if he had learned what the program was for the day, but he anticipated me saying, “Hello, Jim, sit down and tell me what's in the wind.”

“What is?” I asked.

“Rumors, just rumors; Johnson men are going to capture North Dakota. That is the order of business for today.” And then, I think to stir me up, he added, “And Dick is just across the Red River directing the Johnson forces.”

“Why does he stay on the Minnesota side of the river?” I asked. “Is he afraid of North Dakota's Bryanites?”

“Nope, 'fraid of being rebuked for meddling in North Dakota politics.”

“Call it meddling, if you like. This thing is bigger than any state,” I said, “and I will meddle right here, if I get a chance.”

Authier smiled at my heat and observed provokingly, “In the gentle art of politics, Jim, “Cardinal” Richard O'Connor has you beat to a frazzle.”

While we were talking the convention was called to order and I whispered, “If you don't mind, I will sit here with you.”

Authier winked, knowingly, and handed me some paper, saying, “Get busy.”

After the usual convention preliminaries, and while waiting for the reports of committees, John Burke, Governor of North Dakota, and a very lovable man, was called to the platform by the unanimous and vociferous demand of the convention.

Governor Burke delivered an inspiring address. In simple phrases he sketched the philosophy of Jefferson and the sturdy patriotism of Jackson; the statesmanship of the Democratic Party in any emergency could be relied upon “now as in the past,” he argued. “We do not need to look beyond our neighbors for proof of the eternal youth of our party, and its capacity to produce leaders of high order like John Albert Johnson of Minnesota.”

The applause that greeted Governor Burke's allusion to Governor Johnson was discouraging to me, but George 100 Authier, as a professional observer, was wiser. He said, *sotto voce*, “That noise is for the Governor himself—they sure like ‘honest John Burke.’”

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When the cheering subsided and the chairman was pounding the table for order, my attention was called to a crowded upper box of the theater where some husky-voiced men were chanting the refrain “Bangs, Bangs, Tracy Bangs, Bangs, Bangs. We want Bangs.”

The chairman smiled up at the men in the box and said “Mr. Bangs is called for. Will Mr. Bangs come to the front?”

A large handsome man appeared on the stage as if by magic, and before we realized what was taking place, so magnetic was the power of his oratory, we were gazing on a mirage of the White House. With a boyish face, wistful and Swedish, smiling, at the head of its council chamber, Tracy Bangs climaxed his speech in a bold declaration that North Dakota should endorse Gov. John A. Johnson for President of the United States.

The applause was loud and genuine. It began to look like a North Dakota stampede. The big-bellied men in the box were joyously slapping each other on the back. They nearly forgot their cue, their pre-arranged program, but presently they began to shout, “Jones, Jones, Jones of Rock.”

The chairman, smiling good naturedly at the shouters, introduced Mr. Jones, formerly of Rock County, Minn.

My friend Authier paused in his reporting long 101 enough to remind me, with a merry twinkle, to “watch Dick's machinery work.” “Ball-bearing steam roller. How do you like it?”

I said, “Oh, shut up.”

In the meantime, Jones was trying to get his audience but could not. The delegates were restless. I decided that it was about time to make an effort to check the Johnson movement. But now my difficulty was to get in touch with my little group of Bryanites in the audience. They would not look at me. The Jones of Rock call was apparently voluntary. How was I to get my name called with as much assurance. I dropt my handkerchief on the

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floor and picked it up again. I stood up and sat down. I coughed violently. In vain! I seemed to attract every one's attention except my friends'. I was quite desperate when "Jones of Rock" concluded and sat down. I heard someone in the audience say "Manahan—speech." A few others repeated the call. It was a pitifully weak demand and the chairman paid no attention until I walked out to him and said, "I guess some of the boys want to hear from me." He looked puzzled (this was no part of the program) but said, "All right."

From the standpoint of the audience it was a diversion to see a stranger, unannounced, walk out to the very edge of the stage and stand, still as statuary, for a painfully long moment. I guess they thought I was going to sing. You could have heard a pin drop, it was so quiet.

I alluded to the fact that I was a stranger and spoke 102 without an introduction. My identity was of no importance. Minnesota was my home. Our governor had been complimented by North Dakota speakers. I wished to return the compliment. No state could boast of a greater governor than North Dakota had in John Burke. But the time for idle compliments was past. A national campaign confronted the democracy. We must think in national terms—we must consider national personalities. In the historic background of the nation, we had Jefferson and Jackson. In the present arena of political conflict, we have one man, and one name, to match with the immortal democrats of the past, and he stood first in the nation's democracy, as William J. Bryan.

In the parlance of the day, the applause for Bryan which all day had been suppressed, now "raised the roof."

The Johnson forces were completely routed. They didn't have the courage to try for a second choice endorsement. But two days later, in St. Paul, Governor Johnson publicly announced his candidacy for the democratic nomination for President of the United States.

[ 2 ]

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As the summer of 1908 advanced, the temperature of preconvention campaign organizations mounted higher and higher. The Bryan machine, if such a loose and rattling contraption could be called a machine, was made up of enthusiastic, individual volunteers, like myself, 103 scattered everywhere without unity or sense of direction. A horde of dreamers mostly guided or misguided by the tireless typewriter of Bryan's "brother Charley," who wrote to mostly everybody at great length without committing his distinguished brother to anything. No Bryan worker was ever authorized or directed to do any specific thing. He was simply expected and assumed to be for "W. J." and if a mountain or a mole hill stood in the way to go over it for "W. J." True enough, Charley Bryan had what he called "W. J.'s kitchen cabinet," but this little group of Bryan leaders was not called together by him until the eve of the convention at Denver. The preconvention work was haphazard and individualistic. Nothing but the overwhelming personal popularity of Bryan with the rank and file gave him power over the delegates.

The Johnson organization, on the other hand, was comparatively small, consisting of a select group of seasoned politicians. This old guard of Bourbon democracy, city bosses, business lawyers, grain gamblers, industrial magnates and others who feared or hated the idealism of Bryan, had perfected the ancient art of promising and had, as well, ample funds for propaganda.

In St. Paul, the home of Hill, the Railroad magnate, and O'Connor, the political boss, the Bryan sentiment was more or less submerged by the appeal to local pride in Governor Johnson as a native son. Fred Pike, a liberal lawyer, and I, however, as hero worshipers of the great 104 Nebraskan, refused to recognize the Johnson appeal to Minnesota sentiment. We tried for a Bryan delegation to the state convention and experienced the full weight of the steam roller of the boss; as Frank Day, the private secretary of Governor Johnson, stated to the convention, "No pike or piker, no man or Manahan can stand in the triumphant way of Governor John Albert Johnson."

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The Minnesota delegation was instructed to vote for Johnson for President of the United States.

I was not elected as a delegate to the Democratic convention called to meet at Denver, Colorado, on July 4th, 1908, but decided to be there in an unofficial capacity, the envoy of myself as a citizen of the United States. I timed myself so as to be on the battle ground early, arriving in Denver about three days before the convention opened.

Very few national characters had yet come upon the scene and there was a dearth of copy for the horde of reporters and special writers that were swarming the hotels in search of preconvention stories. Mostly any one, known or unknown, could get a hearing, but I had not anticipated such a situation. I very properly, and innocently, registered at the hotel as "James Manahan, St. Paul, Minnesota" to find myself instantly accosted by an alert young man who said, "From St. Paul? and a Johnson man no doubt?"

"Not by a damn sight," I replied with some heat, in which the young man caught the scent of a story.

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He said, "My name is Conway. I represent the *Rocky Mountain News*, and, just for a change, would like to get the point of view of an anti-Johnson man from Johnson's own state."

We found easy seats and I said, "Jim Hill, and men of his kind, the Wall Street crowd, are backing Johnson, not with any great confidence of controlling the Democratic onvention, no, they are making the fight to block what they call Bryanism."

"But what proof have you," challenged Mr. Conway, "that the moneyed interests are backing the governor?"

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“Money proves itself,” I answered. “Money talks. Who has been paying for the nation-wide propaganda and expensive headquarters in New York and Chicago? Money is the answer.”

“But didn't Governor Johnson reduce railroad rates in Minnesota?”

“No. He simply bowed to the will of the people. The fight was led by George Loftus. When the hearings before the railroad commission reached its climax in proof of political contributions by railroad officials, and Jim Hill was put upon the witness stand to testify as to his part in politics, and the railroad commission shielded him by putting me as the trial lawyer out of the case, I sought an interview with Governor Johnson and laid the whole matter before him. He commended the work Loftus and I had done for the shippers, promised his co-operation, and as I was leaving his office, he put his 106 arm, in his boyish and lovable way, about my shoulders and said, ‘Keep up your good fight, Jim, and I will back you.’ But when the test came and I filed charges with him against the railroad commissioners accusing them of subserviency to James J. Hill and favoritism in the performance of their duties and asked for a public hearing before him as governor, and the removal of the commissioners, he forgot his promise and his duty and dismissed my complaint in a complimentary letter commending my work. He is a politician. I know they are shouting now that Johnson is a great reformer, but he is not a reformer and never has been.”

During my tirade to this reporter he scribbled a few notes on ragged strips of paper and when I paused he remarked, “You certainly burn your bridges behind you, Mr. Manahan. Do you represent Bryan?”

“I do not. Mr. Bryan does not even know I am here. I am, of course, for him, and I am trying to puncture the Johnson boom, but I speak only for myself.”

“Who will head the Johnson delegation from Minnesota?”

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"I do not know who will be chairman of the delegation, but Dick O'Connor will be its boss."

"And who is O'Connor?"

"He is the boss of St. Paul and the best dressed man seen about Jim Hill's railroad office."

I had newspaper clippings descriptive of the railroad hearings in Minnesota, accounts of my disbarment by 107 the commission for attempting to cross-examine Hill; also copies of my formal charges against the commission filed with Governor Johnson and his letter to me all of which I exhibited to the reporter. He, of course, with true professional loyalty, accepted these press clippings as good evidence which the *Rocky Mountain News* spread upon the first page of its morning edition. Convention news was scarce so far in advance of the opening day and so my fight on Johnson was published generally. Special writers wrote picturesque stories. Senator Thomas M. Patterson, the editor and proprietor of the *Rocky Mountain News* called on me to "verify," he said, the story that "surprised" him in his "own paper." He had been led by "all accounts" to "think very kindly" of Governor Johnson; was considering him for second place on the ticket; and did I know what Bryan thought of him for second place? I assured Senator Patterson that I did not know Mr. Bryan's views; that I had no authority to speak for him, "But," I said, "Mr. Bryan knows me, and you can ask him, if you like, if my work is good."

I don't know whether the Senator phoned to Lincoln or not, but, the next day, he very cordially told me that the columns of his paper were open to me for any statements I might see fit to make.

As the delegates arrived in Denver, and joined the swarms buzzing about the big hotels, the sentiment and enthusiasm for Bryan increased; the little Johnson group 108 from Minnesota was quickly and completely submerged. Charley Bryan assembled his "kitchen cabinet" in the Bryan headquarters and to each "team" of two or three composing it, assigned certain state headquarters to be visited and canvassed for Bryan pledges. This

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organized campaign of personal solicitation, on the eve of the convention, gave to the Nebraska delegation about ten times its nominal strength, and solidified the Bryan support, which ultimately triumphed.

When the problem of choosing a running mate for Bryan came up, the headquarters was swamped by inquiries and suggestions. Judge Cohalon of New York, attorney for Tammany Hall, called in behalf of Wm. J. Gaynor, Mayor of New York City, whose nomination for vice-president he urged, saying earnestly, "He can, and he is the only man who can, carry New York state for the ticket and elect Bryan."

Former Congressman John Lamb of Indiana, another Catholic whose name I cannot now recall, and myself, were called in conference by Charley Bryan who wanted our advice as Catholics before submitting the matter to W. J. Bryan with whom he was in constant touch over a special wire to Lincoln. We advised against taking the hazard of the storm of religious prejudice that would break if a Catholic were nominated. Had we shown more courage and wisdom in our advice at that time and precipitated a campaign of intolerance the poison drawn might have moderated the sinister aspect of the 109 campaign twenty years later, and Al Smith would now as I write, preside in the White House.

When headquarters for the Bryan campaign of 1908 were opened in Chicago, I went along, and was put in active charge of the speakers' bureau. This represented an infinite amount of detail work as well as an accurate knowledge of the field. Congressman Champ Clark was chairman of this Bureau but too busy in his own campaign to serve. Our work was to assign the national speakers to the states in which they could do the most effective work and to arrange the itinerary of each so as not to conflict with the dates of any other speaker.

The activities of the speakers' bureau also had to be co-ordinated with that of the labor bureau, under Martin J. Wade, now a Federal Judge in Iowa, and with that of the publicity bureau in charge of Josephus Daniels afterwards Secretary of the Navy under President

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Wilson. This work of co-ordination devolved upon John H. Atwood of Kansas, vice chairman of the committee, and himself an orator of great power. The task of dating, and of humoring the national orators, fell upon me. I say "humoring" because most of them were, as all orators are prone to be, like prima donnas a bit vain and keenly sensitive as to their power and importance. Each "spell-binder" as we called them, especially those from the South, wanted the spotlight during the whole campaign. One United States senator, a pompous and tiresome man, offered us five dates provided we assigned 110 him to St. Louis, Chicago, Detroit, Cleveland, and Indianapolis with a day of rest preceding each date. Of course, there were exceptions, men like Ollie James of Kentucky who said "I will go anywhere, and speak in doors, or out of doors, at the cross roads, but country school houses preferred." He was refreshing.

Directing the activities of the speakers' bureau was exacting and tiresome work, but it gave me the opportunity of meeting most of the leaders of the democratic party and I enjoyed it. There was, I think, on our list, every known type of orator. I recall the giant Ollie James, of Kentucky with a voice to match his physique; the frail John Sharp Williams of Mississippi, whose keen sentences cut like a razor's edge; and J. Ham. Lewis, the ultra-fashionable dandy in gay cravat and gray spats, who swept his audience before him in a hurricane of history, illuminated by classical allusions, with an occasional sarcastic reference to "The honorable gentlemen of the Republican Party." The toiling masses loved Lewis as children love Santa Claus.

Many of the distinguished party leaders from the South, however, were not convincing campaigners in the Northern states. There was no lack of forensic ability; their wit and humor was entertaining, and they told good stories, but somehow their talk sounded like that of an outsider. They pleaded eloquently the cause, as it seemed, of a stranger. They could not forget that, "back home" they had a "race problem" and that "white

James Manahan *W. I. Bryan Campaign ...1908*

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111 supremacy” must always be considered by them, in the solution of every economic question.

I was beginning to learn but hardly conscious of the fact that the handicap, if not the fatal obstacle in the path of the democratic party from a national standpoint was in its overpowering, localized, negro problem.

With the Bryan family, however, as with most of the northern leaders of the party, the “solid South” was seriously accepted as a “gift from the Gods” to be counted in advance as so many electoral votes for the Democratic ticket. Under the spell of Bryan's eloquence it was easy to forget that the white man's dread of negro equality in the South, encouraged an aristocratic and reactionary point of view on the part of her political leaders. So long as our candidate pleaded the cause of humble men without regard to color; so long as he condemned aristocracy and its devouring selfishness; while he advocated progressive principles like the initiative and referendum in government, we could overlook the disfranchised votes that made the South so solid; we could be patient with the southern orators who told, in an earnest campaign, nothing but funny stories about “a cullied gentleman down in Georgia, named Rustus.”

I do not think that Mr. Bryan ever recognized as a handicap this southern infirmity of his party. He was too intense a partisan to recognize a fundamental weakness in the democratic party. And yet I know he would not compromise with anything he considered wrong. 112 One day early in the campaign John McDermot, formerly a member of Governor Johnson's official family in Minnesota but at the time of his call the representative of the liquor interests nationally organized, came to see me at the Democratic headquarters and, as he said, frankly laid his cards on the table. He told me that he had always been a democrat, and had voted for Bryan in 1896 and again in 1900. He represented to me that many of the powerful liquor men in his organization were Democrats and wanted to support the ticket vigorously. But inasmuch as their republican associates had assurance from Taft that if elected he would treat the liquor interests fairly,

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they would like to have a similar understanding in an informal way, with Bryan. "We do not expect Mr. Bryan to make any definite promise or put anything in writing, he said "We know that his work is good, and," he added, "if you will see him personally and get his verbal assurance that he will give the liquor business a square deal if elected, that will be enough; we will do the rest."

It looked good to me. I said, "Every business is entitled to a square deal and I think Bryan will say so."

I arrived in Lincoln early in the morning and knowing how difficult it would be to get any of Mr. Bryan's time later in the day I phoned at once. He invited me to breakfast and I went out to his country home on the street car. During breakfast we discussed the campaign plans. He was full of enthusiasm and sanguine of success, 113 but seemed to show a very vital interest for every detail of work of the speakers' bureau, making many wise suggestions.

When I considered the time opportune for broaching the special purpose of my mission, we were sitting comfortably in the easy chairs of the library. When I mentioned John McDermott and the national organization of liquor men, Mr. Bryan sat up erect and stiff but said nothing. Tactfully as I could, I spoke of the embarrassment the Democrats of the liquor organization were having in giving him effective support. I noticed his big jaw grow more rigid, but he made no comment. I repeated what McDermott said about a square deal being all they asked and said, "They will take my word for that, Mr. Bryan."

He turned sternly upon me and said, in low grim tones that I shall not forget, "No, Jim, no. The saloons can't use me. I am against them."

I returned to Chicago feeling as though I had been spanked by my father.

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## CHAPTER IV RECOVERING

[ 1 ]

THE defeat of Bryan, and for the third time, was to me a bitter disappointment. "What is the use!" I said to myself. "The poor devils you fight for won't listen—when they do listen, they seldom think—when they think, it is along selfish, personal lines. What is the use?"

In the reaction from months of political enthusiasm I developed a state of extreme pessimism. I swore off politics. In the future I would "look out for No. 1" and let Tom, Dick and Harry take care of themselves. As a business man I would "play the game and make money."

Checking over my law docket I found a number of cases, some of them semi-public in character, demanding my attention.

The case of Loftus against The Pullman Company was unique in this: It started as the gesture, or to be more literal, the spasmodic kick of a big man too long for his berth. This same man came direct from the Union depot to my office. He was mad. His face was red.

"I want you to sue the Pullman Company today," he said with a scowl.

"All right," I answered, "but what for?"

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"Had to take an upper from Chicago. Couldn't sleep."

I smiled, "And what do you claim, George, for loss of sleep on a Pullman?"

He grinned, "Not much, but you don't get me. This is the way I figured it out during the night. It's discrimination to charge me as much for an upper berth as the man below me pays for a lower, and besides that all their berths are too short and their rates too high.

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You just draw a complaint to the Interstate Commerce Commission in Washington and I will sign it. Couldn't sleep all night."

I drew a simple and informal complaint against the Pullman Company saying that its sleeping car rates were unreasonable and discriminatory, which Loftus signed and mailed to Washington. Neither of us realized what mighty machinery we were setting in motion that morning. In fact I had quite forgotten the incident when some months later I received notice from Washington that our complaint would be heard by the Interstate Commerce Commission sitting in the United States Court room in St. Paul on December 18th, 1907. Phoning Mr. Loftus I said, "Your Pullman case is coming on for trial in a few days. Are you prepared to prove your complaint?"

This did not surprise me, for I had long since learned to rely on his resourcefulness as a litigant, but I was curious to learn how he could find many witnesses who could or would testify that the sleeping car rates were unreasonable or discriminatory.

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I said, "Bring in your witnesses so I can go over the matter with them." And as a hint I added, "You know, George, it's one thing to swear at the Pullman Company in the night and quite a different thing to swear against it in the court house."

He laughed and said, "Don't worry. My witnesses will swear both ways with both hands up, like the Pullman has the public."

"Well," I weakly rejoined, "bring them in before the trial."

In the meantime, I studied Moody's Manual and other works on corporations in the public library, and acquired all the information I could, regarding the organization, earnings and dividends of the corporation. On the day before the trial I called my client to the office and told him that the annual reports of the company, which I had before me was good evidence but our case could not be proved by documents alone. That we had to have witnesses.

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That I was afraid to put him on the stand to prove his own case. He could not show that he travelled much; they would make him admit that he hadn't used a Pullman ten times in his life; he could not prove the berths were too small because he was too big.

"They might laugh us out of court," I petulantly said, for, as usual, I was nervous on the eve of trial and very unreasonable.

Mr. Loftus was patient, as he always was with me, and instead of reminding me that I was paid for my work, 118 he smiled in a friendly way, and like a mischievous boy with a great secret, said, as he pulled a paper out of his pocket, "Here is my list—twenty-three good witnesses. They will all be there."

They were. When our case was called next morning the old court room looked like the African Central Depot in the Congo Free State. There may have been only twenty-three of them, but they gave the impression, with their eager eyes and smiling teeth, of a whole army of ex-Pullman porters.

The distinguished lawyers from Chicago representing the Pullman Company and Judge Thomas Wilson of the Omaha Railroad tried at first to be amused and scornful but when the humble and despised ex-porter testified that the standard wage paid by the sleeping car company was twenty-five dollars per month, they were obviously annoyed, and this annoyance became painful when the witness volunteered the information that out of that salary he had to pay for his own uniform and all his fines and penalties. I innocently inquired what he meant by fines and penalties, and he answered by an illustration.

"A lady sometime, accidental like, walk off the caa' in the mo'nin' with a towel in ho bag—the potah pays for it out his own salary and compensation."

Vigorous, and at times vehement objection was made to this line of testimony; it was not material; it was trivial; it was beneath the dignity of a great commission 119 to listen to such rubbish. The objections were blandly overruled by Judge John Marble for the

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Interstate Commerce Commission with the dry remark that the evidence was interesting, if not very important.

But when I offered to show that the travelling public and not the Pullman Company paid the salary of its porters in the form of tips, the presiding judge sustained the objection with the observation that the Commission would take judicial notice of the tipping custom of the American people.

The testimony of a few ex-porters of the Pullman company was all proper enough as a preliminary skirmish in the case and did in fact serve the purpose of upsetting the pompous assurance of the eminent and dignified counsel of the "Palace car" monopoly. But I knew, of course, that the hearing called for something more substantial in the way of proof. The examiner was getting impatient, and I was about to take the hazard of putting Mr. Loftus himself on the witness stand, when I noticed a well-groomed gentleman, apparently a spectator, sitting behind the Pullman lawyers, and I wondered if possibly he might be an official of the company. Stepping quickly back into my crowd of dusky witnesses, I quietly asked a waiter of the Commercial Club if he knew the man in gray inside the railing.

"Deed Ah does," he glibly whispered. "That am Gennul Supertenant Roice—yes saah, that am Mistah Roice hisself."

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When I returned to my place at the counsel table I consulted my files for a couple of moments, then turning to the man in gray, I quietly said, "Mr. Rice, will you please take the witness stand."

"What! me?" he exclaimed in a barely audible voice, as startled and surprised as though I had thrown cold water in his face.

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Mr. Rice made an excellent witness for our purpose of revealing the enormous profits of his company. We were able to offer on his identification the annual reports of the corporation to its stockholders and incidentally we showed the necessity for a hearing in Chicago where the books and records of the company would be accessible.

The trial, after several postponements, was finally resumed in Chicago, with Franklin K. Lane, afterwards Secretary of the Interior, in President Wilson's cabinet, presiding for the Interstate Commerce Commission.

With large expressive face, generous mouth and bald head, Commissioner Lane, looking like an archbishop, was an able and fearless judge. Born in Canada, but educated in California, he developed early in life an intense and patriotic love for the United States and a deep sense of public service. He died poor. He was honest.

Trying the Pullman case, or for that matter any other transportation problem, before Commissioner Lane was not laborious work. His adroit questions or timely suggestions usually clarified, as we went along, the cloudy and ambiguous conclusions incident to the certified 121 bookkeeping of the auditors. He did not need to be reminded of the old proverb and its answer, "Figures won't lie"; but "Liars will figger." As a philosopher he knew mankind and he played no favorites. He would, with the same open mind, listen to the testimony of the negro porter or of the president of the Pullman company. Even though that president at the time was Robert Lincoln, son of Abraham Lincoln, and the humble porter was Abraham Lincoln *Jones*, the grandson of a slave emancipated by the immortal Abe.

Commissioner Lane's ability and courage in this and other cases; his serene forbearance as zealous lawyers labored, and at times quarreled; his industry, honestly patriotism; all sterling qualities for efficient public service, did much to make me forget my experience with the Minnesota Railroad Commission and to restore my confidence in the capacity of government to regulate and control powerful public service corporations.

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The trial in Chicago lasted for several days and disclosed the grip the Pullman corporation had on the railroads contracting with it. As a stout monopoly it had been able to dictate the terms on which its cars would run and to insist upon guaranteed annual earnings for each car from the contracting companies. It had established itself as an exclusive luxury and necessary convenience for travellers and had imposed its own schedule of rates. Its profits were stupendous. From a modest capitalization of one hundred thousand it had become in 122 one generation a hundred million dollar concern. The evidence disclosed that each standard sleeping car during its natural life would from its own earnings pay its own operating expenses and ordinary repair bills, return to the company its own cost of construction, and build not less than three more cars of the same type. It would seem as though the fecundity of sleeping cars seriously challenged the attention of a berth control commission.

The decision in the Pullman case was a triumph and a vindication for George Loftus. His friends gave him a banquet in Minneapolis. His corporation critics were silenced by the judgment of the United States government that it was discrimination to charge the same for an upper as for a lower berth. The conception, the purpose and the victory alike were all his, but he, generous soul, tried to give me credit for the saving of over two million dollars per year for travellers of the United States.

### [ 2 ]

There is always the possibility of something new and unexpected turning up in the general practice of law. Ordinary clients come and go, leaving no definite impressions and easily forgotten fees, but now and then something entirely unforeseen comes to pass and leaves behind it both compensation and mystery. I recall such an incident that made an indelible mark.

It was after hours and the office building was more quiet than usual. My big chair was comfortable, and 123 being alone, I could, with a green shade over my eyes, put my

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feet on my desk, lawyer-like, and dream. I think I must have drifted into sleep. The consciousness that someone was in the outer office at once became very real, but I had heard no sound. I was not frightened. Nevertheless the deep silence, with the certainty that someone was in it, made me shiver and I stared at the door in vague suspense. Slowly it began to open and a voice, strangely unreal, whispered from the shadow.

“Are you alone?”

If I answered, I did not hear my voice. A tall man, slightly stooped, but with dignity, stepped quietly into my private office, cautiously closed the door behind him, approached my desk, and with great black eyes glared at me. With an effort I managed to say, “Hello.”

Instantly a change came over the stranger. His eyes softened into gentleness. A wistful smile answered mine as he said, “I was told, sir, that I could rely on you for protection, but pardon me, not as a matter of charity. I must give you a retainer on account.

And to my amazement, he took out a large purse and counted out one hundred dollars. When the usual receipt was given he carefully read it, and filing it in his purse, continued, “Mr. Manahan, you are now my lawyer, and what I tell you is sacredly confidential.” Slightly pausing for my nod of assurance, he went on, with bowed head, his voice faltering. “I am a chemist, well known in Europe and America—and I realize, as 124 a scientist, my exact condition. My royalties yield me a large income. We have taken a home for the summer at Minnetonka. My wife and boys are out there now.”

His voice broke on this allusion to his wife and boys. He looked furtively around—and frightened—ashamed—like a man in desperate peril, he confessed in a whisper, “I am a dope fiend.” Then he commenced to tremble—struggled vainly to control himself—and muttering to himself, “Must have help,” took off his coat, rolled up his sleeve, loaded a hypodermic syringe, stuck it into his arm, pressed the morphine home, sighed, put his instrument away, turned down his shirt sleeve, put on his coat, seated himself in front of

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me and with perfect self-possession and in a natural voice said, "Now, Mr. Manahan, we can resume our conference."

"I am afraid that you came to the wrong place," I said. "You need a doctor, not a lawyer."

"Most assuredly, Mr. Manahan, I must have a doctor, one whom my wife can't influence. She wants to put me in an insane asylum. The drugs I take give me hallucinations, it is true, but I am sane. I saw a procession of white rats running across my wife's dresser when she was fixing her hair this morning. I knew they were not real because she cannot abide rats. That was the effect of the drugs. But a moment later I caught the reflection of her face—she is a beautiful lady—in the mirror, and in the smile of her inscrutable lips I saw her form the word "Harry." My old college chum. They were engaged before I met 125 her; at once I knew he was hiding in the closet. I would have caught him, but did not want to embarrass her. No sir, I am perfectly sane."

"But what do you want me to do as your lawyer?"

"As a scientist, I have everything planned. Select a reliable physician, who will confine me in a private sanitarium with nurses instructed to give me, in graduated doses, less morphine, each day, until I am cured and then, sir, you can successfully resist any effort to deprive me of my liberty."

The doctor consulted was a general practitioner of wide experience. Astounded by the patient's knowledge of drugs, of brain structure and mental functions, of correct treatment and the necessity of will power, he took a special interest in the case and personally selected and instructed the nurses.

For several weeks I heard nothing further from this extraordinary client, and as he had deeply touched my sympathy, I was hoping to hear of his cure when his doctor called me up to say it was quite hopeless, and that he was sending me a letter of dismissal he had

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just received from the patient. The letter in beautiful script but unsigned, lies before me. It reads:

“My dear Doctor:

“Late one afternoon some six weeks ago, I called upon Mr. James Manahan in his office for the purpose of retaining him to protect me in my liberty. My first impression of Mr. Manahan was disappointing. He had 126 been highly recommended, but when I opened the door to his private office, I found him sitting in a big chair with his feet on his desk, apparently asleep. However, when he awakened and greeted me with a cheerful ‘Hello,’ I was reassured and decided that he was at least a well-meaning man and could be trusted. I gave him a retainer of \$100 and took his receipt, which I have, for that amount.

“Having thus established our relationship of attorney and client, I freely unbosomed myself to Mr. Manahan revealing to him that I was a chemist of international reputation, that I had ample means, that my family was located in a cottage for the summer at Minnetonka and that being a student and scientist I had thoroughly investigated my own condition, fully realized that I was a dope addict, which fact I painfully confessed to him.

“I admit that the ordeal of this confession on my part quite unmanned me for the time and that it was necessary for me to administer to myself in Mr. Manahan's presence a heavy dose of morphine. In doing this, I illustrated to him my habit. In taking a hypodermic syringe, putting into it a proper dosage of morphine in liquid form, rolling up my sleeve and inserting the needle into my flesh depositing the morphine under the skin I illustrated to Mr. Manahan the almost instantaneous effect of the drug upon racked and jerking nerves. After the treatment, we resumed our conference and I explained to Mr. Manahan that I came to him 127 primarily for his assistance in preventing my wife from having me committed to an insane asylum, and in the meantime he should secure for me a first-class physician who would put me in a private sanitarium where I could undergo a cure.

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"I warned Mr. Manahan that in selecting a physician for me he must exercise great care lest my wife would influence him against me and I assured him that I was perfectly sane and I illustrated how rational I was by telling him that I knew that over-doses of the drug produced hallucinations. For instance, that morning I had seen a procession of white rats running across my wife's dresser while she was fixing her hair. I knew I was seeing things because of my wife's abhorrence for rats. I knew that she would not permit them to run over her dresser in that manner. However, I said I also saw things that disturbed me that were not hallucinations. For instance, I caught a glimpse of my wife's face in the mirror and saw her smiling to herself. In that smile I saw her lips form the word 'Harry.' Harry was my old college chum. They were engaged before I met her. A few minutes later, when they thought I was reading a newspaper, I saw her hiding Harry in the closet, but I did not seize him, because I did not want to embarrass her. I told this to Mr. Manahan to show him how perfectly rational I was. When he advised me to get a good doctor, I concurred and said that I wanted one who could be depended upon to give me scientific treatment with a daily reduction of the dose until I was cured and that in the meantime a reliable nurse should be employed at my expense to prevent my getting morphine of any kind for myself. As you are aware, this arrangement was made and I was confined to this sanitarium. You prescribed a rigid and scientific course of treatment. But I notice of late that you are not satisfied with the progress of my cure. The nurses seem puzzled and anxious. You must therefore, immediately release me; my cure is a farce. From the beginning I have outwitted myself as the man paying the bills. That's good. I call that clever. I'm not blaming you doctor, I'm holding Manahan responsible. He is my lawyer and I told him to watch me or I'd fool both of us, and get the dope.

"I thank you for your effort to help me. I sincerely wanted to be cured. I do yet. But while planning to be cured—hoping, praying, enduring the pains of Hell, to be cured—my cunning other self could not endure the thought of being without relief when the awful hour of craving would gnaw upon my soul. I will have to work out my own salvation. Let me out.

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I will see old Manahan and give him and my better self another chance. I like Manahan.  
Let me out!

In Haste.”

When, a few days later, my afflicted client came to the office he was entirely unrepentant and dismissed the subject of his “cure” with the casual remark that he would, when his business affairs were “put in order,” 129 explain our little experiment. Today he was full of business. In a snappy way he opened a small leather bag; took from it several neatly tied packages; placed them before me in precise order and said, “Mr. Manahan, these documents represent my life's work. My fortune, sir—in a way this property has measured my success—it must now cover my failure.”

He paused, I was mystified. He smiled tolerantly and continued, “You don't understand; no ordinary man would; but you are docile and sympathetic, you let me have my way.” After a pause he added almost playfully, “That's why I like you, Manahan.”

A bit uneasy, I managed to murmur, “Thank you,” and waited. In a flash, his mood changed. With a twisted smile he said, “I am glad you called on my wife while I was in the sanitarium; damned considerate of you to realize how worried she would be about me. She has your sympathy—don't blame you—wonderful woman.”

I was about to speak when, like a mind-reader, he said, “You think I have misjudged her. Yes, I know, the drugs distort my thinking. That's why I want you to be her lawyer.”

“Your wife's lawyer!” I exclaimed in amazement.

“Yes,” he said, “That's my purpose in turning over to you these securities. She won't take them, personally—she says I earned them with my heart's blood. God! how wise women are. I never told her, but she somehow 130 knows that to succeed, I—lost—my—own—soul. I must now redeem it in the same coin.”

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The man was suffering, and I was helpless. A little brown dog ran in front of my car one day and was crushed. His eyes had the same expression. There was a hint of tears when he looked up in response to my admonition to “tell me all about it.”

“I was on the technical staff of our company,” he responded, “when we were sued by our most powerful competitor. They claimed infringement and put our entire business in jeopardy. The trial lasted for months. Each day the outcome seemed to depend more and more upon my skill as a scientist and on my endurance on the witness stand under merciless cross-examination. One evening after a hard day the president of the corporation called me to his office. He said I was enduring a great ordeal, splendidly. That the company had decided to increase my salary and give me an interest in the business. That he knew I had, since college days, the bad habit of going on a spree every six months or so. That was O. K., too, under ordinary circumstances, but would be fatal in the middle of our law suit. Would I give him my word of honor not to take a drink of liquor during the trial? I gave my word. Told him if the craving for drink became too strong I could kill it, as I had been told, with a little morphine. He said, ‘For God's sake, no! Don't do that! Man alive! Don't think of such a thing. We would rather lose our case.’ I told him that 131 it would not be necessary. But there came a day when I felt that to go on I must have a bracer of whiskey. I remembered my word of honor. I must not drink. I would try a little morphine just once. It worked like magic. The weary craving left me. My mind never felt so clear and vigorous. I met that day's stress on the witness stand with ease. But the next day the reaction was terrible. I took another dose. For many days I worked, sustained by the potent drug. We won our case; I won my fortune; I lost my honor and my wife, but by the eternal I can still think as a scientist and shall find a way. My mind is my own. I choose to live.”

As my strange client concluded the sententious explanation which I had invited he looked up at me in a challenging but suppliant manner, and I tried to encourage him, saying

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brokenly for I was profoundly moved, “Certainly—sure thing—I will bet on you—knew a man in Nebraska who cured himself—now running a big farm.”

“That's it,” he exclaimed, “work, work out-of-doors; that is my plan, work or starve. The law of compensation—resistless and inexorable,” he soliloquised; “for the solace of drugs, I denied my wife—must pay in loneliness. To win the world I sold my soul—must redeem by poverty. The law of balance—the unperturbable—eternal—law.” He was looking past me when he paused.”

“He is crazy,” I thought, and quick as a flash he caught me with a glance, and said, “Yes, it is folly to philosophise. We must act.”

And taking up his papers, one by one, he explained, briefly, but with great clarity, his securities and income producing properties. He wanted a trust created for his wife and boys, reserving only to himself a mining claim in Northern Canada.

It became necessary for us to make a trip to Montreal before the business could be consummated. I accompanied my client on this trip with some misgiving. As he was packing his large, English, leather bag, he exhibited a big revolver with the remark, “We can take care of ourselves, if Harry tries to interfere with our plans.”

He insisted on our taking the parlor of the sleeping car, “To be unwatched by Harry's spies.”

At almost every station when the train stopped he would peer out of the window, point out some loafer on the platform as “one of them.”

Early in the morning of the first night out I was awakened as the train stopped at a Canadian station and startled to see a face all covered with lather, a hand holding an old-fashioned, bone-handled razor. A form in a silk dressing gown bent over me and I heard

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a scared voice whisper, "Look, that's Harry, disguised, by cracky, as a bus driver, but," he chuckled, "I don't think he saw me."

I was speechless. The sudden awakening, the ghastly 133 white face, the excited razor was too much. I tried to pray and mercifully the train started. My poisoned client with a sigh of relief withdrew to the washroom.

When we arrived in Montreal my client under the potent alchemy of his own ministrations had completely recovered his equilibrium. He consulted his bankers. He discussed intricate details with trust officers. He transacted business expeditiously and with unquestioned sanity.

With his family provided for and his lawyer paid, my broken friend suggested that we spend a day shopping for the camp life before him as a mining prospector. We visited many old shops and he seemed always overflowing with interesting information. He took me to the old cathedral and showed me a painting of the women at the foot of the cross brought over from France before the English conquest. He said he had no faith but loved the calm of the cathedral. He hoped to find something of its majesty and quiet in the pines of the north. He would be all alone; he might learn to pray. I encouraged him.

He went to his trial in the forest before the tribunal of nature and I hope he won his freedom and redemption. I returned to my office and its grind, and I do not know.

### [ 3 ]

An old client will seldom surprise his lawyer by the exhibition of unsuspected traits. He can as a rule be 134 relied upon to run true to form. If he is a timid soul he will hesitate and question at every turn of the most obvious course. If by nature he is bold and belligerent he will favor the strategy of counterclaim and attack, and again attack. If he is a business man, wise and prudent, he will confer, calculate and compromise. The lawyer, to be of real service, must study his clients' disposition in connection with his documents.

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My contact with Senator Benjt. E. Sundberg, as attorney for his railroad valuation committee and in many conferences on business and political matters, had given me, as I thought, a clear understanding of his personality. He was, as I read his big brown figure, shaggy head and sandy, gray goatee, a Scandinavian Uncle Sam with the gentle disposition of a St. Bernard dog. When I declared, as at that time I was prone to think, that railroad magnates were crooked, he gently demurred in words that suggested, "They know not what they do" and when Loftus said, as he often did, "The politicians in the state house are bad actors," Sundberg would goodnaturedly agree with the charitable reservation "Yes, but they are gude men I think." He always had the good word, it seemed, for every one. It came as a surprise, therefore, to have him come stalking into my office in a warlike mood.

"Mr. Mineham," he said, "the express companies are robbers, and if you will go after them like you did against 135 the Pullman company for Loftus I will pay all expenses and give you a thousand dollars."

I hesitated. I knew that it was worth a lot more than one thousand dollars to investigate and grapple with a giant like the express monopoly. But as I hesitated there flashed across my mind the full picture of Sundberg. A boy in the steerage of an emigrant ship. A young pioneer in the storms of the Red River Valley. A patient farmer, toiling hard and saving frugally, growing and prospering with the state of his adoption, now over sixty and a good citizen, going strong. I hesitated no longer.

I said, "Bully for you, Senator. It's a bargain. We'll go after them hard." And we shook hands.

Formal complaints against the express companies were filed with the Interstate Commerce Commission of the United States and in due course came on for trial February 4, 1910, at No. 67, Wall Street, New York City.

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My experience had taught me that traffic experts as witnesses were to be avoided. They were too well trained to be candid. They were masters in evasion, and very plausible in argument. It was better strategy to summon the higher officials and question them before they could be coached. The brains of corporate management usually function several layers below the top. The chairman of the board, even the president, is often dull and always feels his importance so keenly as to be off guard as a witness and apt to tell the truth, being as a rule an honest man.

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With this strategy in mind we, Sundberg and I, went to New York a few days in advance of the trial for the purpose of reconnoitering. To my former client this trip to the metropolis to “beard the lion in his den” was one of high adventure. It aroused in him the Viking spirit of his ancestors. The giant stride of his long legs, as he walked, his rugged face projected forward, as though pulling him on, his steadily peering eyes, proclaimed the hunt for big game and for conquest. I, too, was greatly enthused. “This is no ordinary law suit,” I said to myself. “The issue is national in scope. Our adversaries are four giants of transportation. Why! the arena for our conquest is on Wall Street itself,” I proudly soliloquised. And I felt, as nearly as a Celt can feel like a Jew, much as David must have felt, as he selected the stones with which to smite Goliath. But when we came in sight of the mighty skyline and heard the roar of Manhattan, we were quite tame, and a bit frightened. We came down to earth and talked of mundane affairs.

“I think we better stop at the Woodstock Hotel,” I suggested.

“How much will it cost?” asked the frugal senator.

“About seven dollars per day for two single rooms with a bath between,” I replied.

Senator Sundberg seemed quite dazed but said, “That would cover meals, of course?”

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“No,” I answered. “We can get our meals wherever we like.”

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“But that's a terrible price to pay, Mr. Minehan; I think I will look around for a cheaper place.”

“All right, I said, “locate yourself and come to the Woodstock tomorrow morning and we will arrange to subpoena our witnesses.”

I had obtained from the Interstate Commerce Commission reports in Washington the names of the leading express company officials and subpoenas for service upon them. The immediate problem was how to personally reach these officials and serve the process papers upon them. I recalled reading sensational newspaper reports describing the futile efforts of process servers to reach Senator Tom Platt, express company official and political boss, in a sensational suit brought by a young woman claiming breach of promise and I was fearful of failure to reach Edward Platt, Jr., treasurer of the United States Express Company, by the usual deputy sheriff process.

While Senator Sundberg was looking for a place “to board,” I visited the general offices of the express companies and observed that each of them had a well-trained corps of inquisitive young men and women whose business it was to ascertain all about visitors to the office and what they wanted. I evolved a plan of getting past this office guard and explained it to Sundberg telling him that I would manage to get him into the presence of the officials we wished to serve and then all he would have to do was to take the subpoena from his pocket and hand it to the man to be served with two dollars as a witness 138 fee and that no explanations or apologies would be expected.

Pursuant to this plan, on the day prior to the hearing, we went to the office of United States Express Company and walked boldly past the information clerks into the elevator, saying

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to the uniformed man in charge, "Senator Sundberg wants to see Platt if he is about this morning."

My apparent familiarity with the treasurer had its effect. The elevator stopped on an upper floor and the operator remarked as he let us out, "Mr. Platt is there."

As we approached a group of three or four men standing apart in conversation, I said distinctly,—“Mr. Platt?”

A dapper little man with mutton-chop whiskers looking like the chancellor of the exchequer in a melodrama, turned on his heel and faced us saying, "Yes, sir."

"This is Senator Sundberg," I said and the magic of the word "Senator" was instantly obvious.

With great cordiality Mr. Platt grasped my client's hand and inquired after his good health. Sundberg was greatly pleased and became likewise cordial. I thought they would never stop visiting, for in the interchange of views and discussion of the crops out West and so forth the Senator was so pleased and entertained that he forgot all about his message until I managed to give him a sharp nudge with my elbow. When I saw him begin to fumble in his pocket to get out the subpoena and the two dollars necessary for making good service the situation became 139 so funny to me that I went back to the elevator and down to the main entrance where I awaited the Senator and in about five minutes he came down quite crestfallen.

I said, "Did you make service on Platt?"

He said, "Yes, but he got awfully mad at me. When I tried to explain that we wanted him as a witness, he said he did not want to talk to me; that I was no gentleman and that I took advantage of him. He would not shake hands when I said 'goodbye.'"

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“Never you mind, Senator,” I consoled, “I will have Mr. Platt on the witness stand, tomorrow, and I’ll make it hot for him.”

Before night we managed to subpoena a general officer of each of the four great express companies; and when the cases were called for hearing and consolidated, we were ready to proceed.

“I call Edward T. Platt as my first witness,” I quietly announced.

Thereupon one of the lawyers for the express company stood up and very pleasantly excused me for making the mistake of subpoenaing the wrong man, but in order not to delay the proceedings they had brought to the hearing their traffic experts and rate men who would be glad to testify and furnish me all the information I might want. I paid no attention to this lawyer's remarks but again quietly said, “Mr. Platt will please take the witness stand.”

No one came forward. I looked around the room and 140 missed the man of the mutton-chop whiskers. He had ignored the subpoena and I saw my chance to even the score of his unkindness to my simple-hearted client. I waited in silence.

Another express company's lawyer made lengthy remarks in which he read me a lecture on practice and took a sarcastic fling at my unfamiliarity with New York procedure. I replied that I did not know it was good ethics under New York statutes for a witness to ignore the subpoena of the court and that I would try the case for the complainant in my own way and with witnesses of my own choosing and if the examiner would not sustain me in that right I would take the matter up before the whole commission in Washington.

Judge Lyons sustained me and suspended proceedings until Mr. Platt could be telephoned by his lawyers to come to the hearing. When he arrived, he was so angry and so outraged that he made a fairly candid and very satisfactory witness for our side.

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It was admitted that the Adams and American Express Companies held large blocks of capital stock of the United States Express Company whose witness was on the stand. The presidents of the two larger companies sat on the board of directors of the third, and frequently conferences were held by the executives of the different companies. This indicated an illegal combination, a rate-fixing device which eliminated competition.

The picturesque character of my former client, battling 141 alone with the express trust of the country, attracted the attention of the metropolitan papers much to the discomfiture of the executives of the express companies who apparently were averse to any sort of public consideration of their business.

A reporter came to the hotel one evening and said he wanted to draw a sketch of Mr. Sundberg for his paper. He said he had been looking for the Senator but could not find him. I said he was stopping with friends. The reporter said that would be all right as it would only take him a few minutes to make the sketch. I was tempted to locate Sundberg for the cartoonist for I knew where he was. It was only that morning when meeting him in the court room I said, "Senator, have you located a nice place to stop?"

He cordially answered, "Oh, yes, I have a lovely place. I got a room with running water for fifty cents a day and good meals, from fifteen cents to a quarter."

"Good Lord, man," I exclaimed, "Where in New York can you get hotel service like that?"

"Yes," he said, "It's a big place called the Mills Hotel. A sailor man directed me to it."

I then recalled reading of the big hotel that Mills, the philanthropist, had built for the shelter of the waifs of the city. It would have made a good story. This frugal Minnesota farmer stopping at the Mills Hotel and cutting the cost of his meals to save money, at the same time paying substantial attorney's fees and keeping his lawyer 142 in a first-class hotel while he battled with great corporations for the common good and no personal advantage.

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It would have made a good setting for a realistic cartoon and I was greatly tempted to tip it off but refrained from doing so in the fear that it might hurt Senator Sundberg's feelings.

During a recess in the trial one afternoon I overheard my client patiently explaining to a New York reporter how he happened to discover the iniquity of the express monopoly. He was threshing wheat with a crew of some forty men, a large casting of his machine broke, stopping operation and leaving the men idle at his expense. He wired St. Paul for a new casting to be shipped out to his farm in the Red River Valley. The casting cost two dollars and forty cents but the express charges were thirty-two dollars, and he commented in conclusion, "You know, Mister, poor people can't stand such charges."

The Commission had, however, a mass of more important testimony than Sundberg's grievance brought to its attention. Treasurer Platt of the United States Express Company admitted that the president of the Adams Express and the president of the American Express had both been elected to the board of directors of his company and thereupon its earnings had been largely increased, but, he indignantly denied that there was any combination or conspiracy or understanding between them to fix rates. The executive officers compelled to testify were evasive and under "advice of counsel" refused to testify as to their salaries and expense accounts. The express business of the country had grown from an original capital investment of "one hand satchel" to a capitalization of one hundred million, in spite of enormous dividends and undisclosed and presumptively comfortable salaries and expense accounts. No such heavy capitalization was required. With the exception of delivery wagons, a relatively unimportant item, especially in the long and profitable hauls, very little property was used in conducting the express business.

I urged upon the commission that the express companies were parasites on transportation, performing services more legitimately rendered by the railroad, the post office and the banks. Fast freight could be handled by the railroads just as expeditiously without the help of the express. The post office could easily develop a parcel post and rural delivery service for the transportation of small packages, and banks and post office

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could transfer money and valuables with equal expedition and safety. A large part of the heavy cost of express service could just as well be lifted from the general public. I did not, at the time, realize the radical implication of my suggestion; I did not appreciate the gravity of the sin of the socialism of the post office. The Interstate Commerce Commission of the United States, however, had great respect for the sacredness of the vested rights of property no matter how acquired, and would do no more than restrain the greedy appetite of the racketeers 144 of transportation. The decision in the Sundberg cases was for my client a victory and a vindication. The whole rate structure for express was simplified and many discriminations were removed; the rates were reduced for the whole United States, an average of fifteen per cent, a saving to the general public each year of more than twenty million dollars.

Sundberg, the farmer, never recovered the overcharge he paid for carrying the repair part to his broken thresher. He was never reimbursed for the moneys he spent so riotously in the Mills Hotel, or for the attorneys fees he paid to me. But he taught one great combination that it does not pay “to make a Swedish farmer mad, by jolly.”

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### **CHAPTER V SKIRMISHING**

[ 1 ]

OUR efforts to secure lower transportation rates, told in preceding chapters, brought us gratifying commendation; and we never suspected that our zeal had been stimulated by personal ambition. We easily persuaded ourselves that our work was disinterested—for the common good—and love of justice; but we were called radicals. As a matter of fact, we were tame liberals, aroused and angered by hurt and abuse.

We had, in the vernacular of the barn yard, been pushed from our dinner by the greedy snout of big business, and like good, honest mules, unfamiliar with Biblical admonition,

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we turned not the other cheek but our legs—we kicked—and as we kicked, we heard, occasionally, the grunting of fat hogs.

Nevertheless, and notwithstanding our imperfection as reformers, we seemed to hold ourselves out as crusaders for the oppressed, with the result that many sought our help.

### [ 2 ]

A little group of militant teachers, under the leadership of Mae Snow, principal of a Grade school in Minneapolis, 146 had investigated the influence over the school board of the so-called Book Trust. The secretary of the board was indicted; but, on his trial by jury, he was acquitted. Thereupon Miss Snow and her committee of teachers were slated for dismissal. They came in force to see us. That day, my somber old office looked like the spring opening of a “Merry Widow” hat shop. After Mr. Loftus was called in from his office next door, Miss Snow told who they were and with a broad grin said, “We understand that you two men haven't got much sense—that you champion lost causes without pay.”

Loftus replied, “A slight exaggeration—so far as Manahan is concerned—but what's the trouble?”

They told us the whole story, and we broke a lance in their defense. We lost the case—Mae Snow was dismissed as a teacher; but the voters of Minneapolis woke up and elected her to the school board and she became one of the bosses of the superintendent who had fired her.

### [ 3 ]

Another matter, outside the ordinary run of litigation, came to my office about this time and brought a fair fee, an illuminating experience and an inspiration. The fee helped with creditors and was quickly forgotten; the experience forced me to re-examine my

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predelictions on socialism and government ownership; the inspiration was Robert M. LaFollette and his confidence which, I hope, abides.

James Manahan *Law Office in Minneapolis ...1909*

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My clients in this matter were the railway mail clerks of the Northwest who claimed they were unfairly treated by the postal department; that they were overworked and unpaid for overtime services; that their lives were jeopardized by the use of old wooden postal cars which in a collision crumpled up like egg shells between the locomotive in front and the heavy all steel passenger and Pullman cars behind them in the same train. The leaders of the organization were fearful of demotion or dismissal by the bureaucracy in control at Washington. Self-preservation suggested that their agitation for reform and relief should be directed from under cover. The chairman of the committee directed me to go to Washington for the organization as its attorney and without disclosing the names of any individuals and he said, "Take this evidence personally to Bob" as strong men, in earnest, always called the great Senator, "He will protect us."

As I left for Washington to appear for the railway mail clerks before the Postal Department and the Congress, I was again admonished to "see Bob" and enlist his support, as though any worthy cause needed an advocate to enlist the help of Senator LaFollette.

In LaFollette I found a masterful strategist. He knew that Postmaster-General Hitchcock prided himself on his "business administration," that his motto for economy and efficiency was, "Take up the slack." The Senator agreed with the principle of economy, but objected to 148 its application when limited to workers in a way to take up more slack than there was. He suggested a resolution of inquiry into the railroad contracts for carrying the mail and economies possible by a revision of these contracts. He inquired why the fines due from the railroads for delays in the delivery of mail were not collected by the strong hands of the government. He took the fight to our adversaries in the department, who,

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put on the defensive, were presently on the run. The rights of the clerks, to fairer pay and safer working conditions, were recognized. At the time I thought that we had won from the government the recognition of the justice of our cause; that we had achieved a moral victory as well as practical relief for my clients. But afterwards, thinking it over, I dimly realized that perhaps it was the grim and sturdy figure of LaFollette standing at the portals of the Postal Department, a living and articulate challenge, that inspired its bureaucrats with feelings akin to fear and led to their reluctant reformation. I was beginning to recognize some of the symptoms of bureaucracy when it fastens itself in malignant form on the vitals of government.

The typical bureaucrat, of the more or less harmless variety, is just an ordinary job holder whose sole ambition is to tie himself to an easy office chair with endless red tape, and draw for life, if not forever, a comfortable salary. He becomes malignant when he makes contact with powerful men on the outside, seeking favor from the government; men whose influence makes him a bureau chief or department head, with recognition and reward sooner or later, within or without the government circles.

### [ 4 ]

When the so-called muck-raking magazines exposed corruption in office, murder by monopoly, treason in trade, and the people in mass began to blink and yawn as if awakening, the bureaucrats in the Postal Department were mobilized to choke off this exposure of evils in high place. The plan was simple: bankrupt the popular magazines by raising the postal rates on second-class mail.

The Postmaster-General claimed magazines and papers were carried in the mail at a heavy loss to the government. The Congress passed a resolution to investigate, and President Taft appointed the commission, with Justice Charles Evans Hughes as chairman. The hearings were in New York City during the summer of 1911, with the Periodical Publishers Association (the leading magazines) opposing the increase in rates.

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Postmaster-General Gilbert M. Hitchcock, with his staff of statisticians and attorneys, sat on one side of the counsel table in the court room of the old Post Office Building. I had been retained as special counsel by the publishers association and sat behind their local lawyers and across the table from the government forces. The hearing lasted 150 through many sultry days, with ever increasing discouragement on my part. For the first time in an important matter, in my own opinion, I failed to make good. In the parlance of a later day, I did not register. Whether it was the tall buildings and noise of the metropolis, the exclusiveness of the local lawyers, the austere dignity of Justice Hughes, the champaign dinners for conference given by the publishers in the old Brevoort Hotel, or a combination of these factors, I went into the court room each morning as a stranger, timid and inarticulate.

I was subdued. In spite of my subjugation, and inefficiency during this trial, and in spite of the plodding dullness of our New York lawyers, our clients, thanks to the truly amazing acumen and industry of Judge Hughes, did not suffer complete discomfiture and defeat. As chairman of the commission, presiding, Mr. Hughes functioned as a trial judge. When Postmaster-General Hitchcock and his corps of statistical bureaucrats from Washington, well groomed and confident, breezed into the old courtroom, and submitted to the "Honorable Commission" ream after ream, schedule after schedule, table after table—evidence in bundles—"His Honor" with open arms received it all in mass, and if one may use common language to describe the dignified behaviour of so austere a judge, figuratively ate it up. With gleaming eyes that bespoke a love of figures, and quick fingers recording his calculations, for an hour or more, Judge Hughes, oblivious of the 151 lawyers, poured over the exhibits and finally, with the subdued smile of a precocious boy who had just solved a difficult puzzle he lifted his bewhiskered face from the pile of papers and began to question experts and attorneys. Then, with marvelous lucidity, he analyzed the evidence offered, and, pointing out its weakness in vital particulars, abruptly adjourned the hearing to give the Post Office Department time to bring on from Washington additional and revised data. It could truthfully be said that the distinguished

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chairman of the commission tried the case on vital points for the attorneys on both sides. As a retained spectator, of a sort, I was anxious, of course, to give "value received" and made abortive efforts to get into the trial. No one was rude, but somehow the spotlight man of the show never could find me on the stage and I was "never listened at." However, I did learn to recognize the tendency and danger of measuring and valuing men and institutions by their returns in money. The Post Office of the United States was on trial, not on its record of service as a contributor to the happiness, education and social welfare of the people, but solely on its balance sheet, as seen through the spectacles of a banker. I learned also that the conscience of a corporation is its profit and loss account and that for a government enterprise, especially, the unforgivable sin is a red-ink, ledger balance. Money talks, and is listened to as reverently, it seems, by the bureaus and commissions of the government as by the bankers 152 who make it their God. The postal rate case was tried on strictly business principles. Did a picture postal from the Garden of the Gods cost a penny, more or less, to be delivered in Hoboken, and if so, how much? The cultural value of the Saturday Evening Post was ignored and it was treated as so much baled hay carried by post.

As the trial proceeded, under the conservation control of Judge Hughes, with the Postmaster-General and his expert accountants from Washington explaining their additions, subtractions, multiplications and divisions to prove it cost nine cents a pound to handle second-class mail, it was brought home to me that possibly the gravest weakness in the socialistic principle of government ownership of postoffices, express companies, telegraph-telephone lines and railroads would be found in its apparently inevitable bureaucracy and red tape. I do not mean to suggest that bureaucratic control of business is wasteful or inefficient. The rank and file of workers in the government service have little or no influence with the department chiefs over them. The workers are gagged by rules and orders and are more apt to grow servile than to become insubordinate or tyrannical. But bureau heads, as the years run, grow sensitive ears that learn to listen with attention to persuasive voices on the outside, and too often hear alluring promises of promotion

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within, or larger salaries without the government service; and often remuneration for good work is augmented by indirect gratuities, concealed as royalties on 153 books, fees for lectures or technical articles. Even social rewards are not always spurned by typical bureau chiefs. And always, money talks.

### [ 5 ]

My brush with bureaucracy in the postal rates and mail clerks cases cooled my ardor for government ownership without restoring my confidence in the efficacy of regulation and control of privately owned corporations engaged in public business. My experiences before the Minnesota Railroad Commission, told in preceding chapters, and the helplessness of state legislatures and commissions, generally, under the restrictions and rules established by the Federal courts in the Minnesota rate cases, convinced me of the utter futility of attempting to curb or control the forces of monopoly and transportation by anything less than the centralized power of the national government, and now it seemed that such centralized power, whether organized on socialistic lines like the postal department or as such a regulatory body as the Interstate Commerce Commission, was subject to the demoralizing influence of bureaucracy. In vain had the people under the Constitution established post offices and post roads for the easy and prompt dissemination of information; in vain was control of commerce between the states given to the congress and its commission; in vain were trusts and monopolies, in restraint of trade, forbidden and condemned by the plain and 154 stern terms of the Sherman Anti-Trust law. In vain every defensive measure the statesmanship of our country could devise, calculating men in the name of enterprise continued to exploit their fellow men. Plutocracy steadily gained ground.

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## CHAPTER VI DEBATING

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DURING the administration of President Taft, trusts and monopolies thrived. The Supreme Court read the so-called rule of reason into the Anti-Trust law. Combinations were incorporated on all sides. Senator LaFollette, then in his prime, vigorously exposed this plutocratic tendency and scathingly condemned the complacency of the administration. The progressive leaders of the country urged him to be a candidate for the republican nomination for the presidency. His friends were encouraged by ex-president Roosevelt who agreed to give LaFollette a free field in which to oppose President Taft, but no sooner had the LaFollette movement assumed impressive proportions than the rough-rider, ex-president suffered a change of heart and persuaded himself to be drafted for the job of leading the progressive forces. It was easy for the anti-Taft groups of near-liberals to rally around the volatile but safe reformer they saw in "Teddy." It required courage, enlightenment and the spirit of a crusader to march in step behind the stern and redoubtable Senator from Wisconsin. There were not voters enough of that type to overcome the safe and sane conservatives standing at ease around the comfortable figure of the president, and he was renominated.

The hearings in Washington and New York revealing the danger of bureaucracy in a centralized government convinced me, at the time, that government ownership was not the answer to trusts and monopolies. The election of a powerful executive like LaFollette might stem the tide of Big Business but the entry of Roosevelt into the contest made that, it seemed, impossible. Some of us thought that direct legislation by the people would protect them from enslavement by plutocracy. We advocated the Initiative Referendum and Recall. These principles in legislation, and the direct election of senators by the people, instead of by the legislatures of the states, were, everywhere, a matter of debate.

The state bar association of Minnesota met in Duluth in July, 1911, at which time these same problems were under discussion. The Standard Oil and tobacco cases and a debate on the Recall of Judges were part of the program. Refreshing my recollection as I write, now, some twenty years later, with a report of the proceedings, I find among the

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participants the names of men in high place in national affairs; Joseph B. Cotton then of the Duluth bar, now Under-Secretary of State in President Hoover's cabinet; Pierce Butler of St. Paul, now Justice Butler of the Supreme Court of the United States; George W. Wickersham, then President Taft's attorney general and now the head of the National Crime Commission named by President Hoover.

Mr. Cotton opening the discussion, among other things, said:

“Within the very proper limits of time set, any attempted review of, or discussion upon, any particular phase of the Standard Oil and Tobacco cases must of necessity be fragmentary and incomplete.

“Like the Dred Scott case of fifty years ago, these recent decisions mark a distinct event, a new epoch, in the economic growth and history of the American nation. As in the Dred Scott case, so in these cases, no great question of constitutional or organic law was involved. Each involved solely the interpretation of a statute. The first one marked the commencement of an upheaval in the political history of America and led to the battle-fields of the Civil War. So likewise, in my opinion, the recent cases mark the way for another, but peaceful, revolution,—to a new era in our governmental policy as to industrial combinations. They establish the rule of reason and the reign of common sense. They presage legislative enactment and lead to sane, forceful and honest governmental regulation and control.

“Since government first began, the natural tendencies of men have always been the same. Only the corporate form seemed to offer greater opportunity for greed and selfish gain. In the days of individualism, competition was just as reckless and lawless,—it was always the survival of the fittest. The business success of any individual depended on his ability to get the business or following of his competitor. This same idea continued with the corporation, and, in that guise, the attempt to stifle competition was, as ever, unlawful, unjust, unfair. Pools were entered into and combinations were made to limit

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production, divide territory, refrain from competition, or to increase or cut prices, and to discriminate against communities. Naturally, the people became suspicious and alarmed. They feared the secretive and too powerful corporations, with their almost unlimited power and influence. They saw these secret forces working to restrain trade, to create wealth, not by the ordinary methods of evolution and growth, but to do it by jugglery, by secret combinations, by pools and pooling agreements, and by discrimination in rates and prices. The American people then, as now, were not willing that all wealth and all power should be in the hands of the few. Neither were they then, nor are they now, willing to go back to individual units. And they could not if they would, for we live in an age dominated by the creative influences and shaping tendencies of centuries, and governed by an economic law, as inexorable as Nature's laws themselves.

“Out of all these alarming conditions and the consequent public unrest, came the Sherman Anti-Trust Law of 1890. No one dreamed that the Act would ever be interpreted in such a way as to prevent the normal expansion of business enterprises.

“As we all know, the original interpretation of the words ‘In restraint of trade’ employed in the Sherman Act, was given by the Supreme Court in the Trans-Missouri case, decided in 1897. There the court held, five to four, that Congress had said every contract, every combination, in restraint of trade is illegal; that when the law says so there is no power in the courts, if they correctly interpret and apply the statute, to substitute the word ‘some’ for the word ‘every’; that if Congress had meant to forbid only restraints of trade which were unreasonable, it would have said so. Instead of doing so, it said ‘every’ and that this word of universality embraced both contracts which were unreasonable and those which were reasonable.

“The initial, fundamental error in the whole chain of decisions has been that the Supreme Court, in the Trans-Missouri and Joint Traffic cases did not hold that the act was to be construed as a legislative enactment of the common law into this country, and did not give to the words employed by Congress the meaning given to the same words and

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expression by the common law as interpreted by the courts. With the exceptions named, our court has adhered to this fundamental error until the recent decisions. These, to my mind, are the handiwork of a master mind,—the jurist profound and the statesman far-seeing and patriotic. By the inexorable law of reason, by the irresistible logic of events, the present Chief Justice has finally succeeded in getting the Sherman law decided as it should have been decided in 1897. His decision of interpretation is not dictum. It is the establishment of a principle by the use of which constructive decisions will flow and the limits be determined as to how far big business may justly go. It is the establishment of a rule by the use of which the boundaries of the middle ground may be determined, between the accumulation of all wealth and power in the hands of the few, and the attempted impossible return to individual units. If you like, call it judicial legislation. A great crisis was upon the court! A great peril confronted the American people and business generally! At all times in history, some great leader, whether at the bar or in the forum or upon the bench or the field of conflict, has always arisen, equal to the opportunity, equipped for the undertaking, and courageous and masterful enough for the burden and the task.

“Interpreted rationally, that the rule of reason is to apply—which is only another way of saying the rule of common sense—(and this has always been the declaration of the common law, largely developed as we all know, by the judiciary itself) the Sherman law, while not an adequate remedy for the ills of which we complain, while not a cure-all for trusts, combinations and monopolies, will not, in my opinion, annihilate business or seriously hinder its substantial development. We know by these decisions that it is intended thereby that this shall be a government of law and not of mere caprice.

“Under the Sherman law, as originally construed, we have only had a few prosecutions and those have been mainly of the most unpopular of our large corporations. In fact, all our large business in this country since 1897 has been at the *ipse dixit* of the successive Attorneys General of the United States. A fine commentary upon our boasted republican form of government, to say the least!

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“The Standard Oil and Tobacco decisions have, at least, cleared the way for, and will inevitably force, a business reorganization in this country and a complete revolution in the organization and management of our corporate life. In my opinion, they will serve as a beacon to light the way to thorough investigation and to enlightened public discussion, out of which will come the command from the American people to the Congress that safe, sane and comprehensive legislation shall be seasonably enacted—to the end that a new era of enduring enterprises and industrial peace, reconciling the right of combination with the liberty of the individual, shall have its dawn.” Thereupon Mr. Pierce Butler spoke, in part, as follows:

“Mr. President, gentlemen of the Bar, I hope that the fact that I, too, feel obliged to resort to manuscript will not be considered as any evidence of combination or 162 conspiracy in restraint of open and reasonable debate between myself and Brother Cotton.

“The importance of the decision of the Supreme Court in the Standard Oil case and in the Tobacco Trust case, not only to the persons interested as owners in these great business enterprises, but also to the government and to the public generally, is so great as to command universal interest and justify discussion at meetings of Bar Associations.

“The Sherman anti-trust law construed and applied in these cases has been in force since 1890. The act in substance provides that every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade is illegal, and that every person who shall monopolize or attempt to monopolize, or combine or conspire with others to monopolize, any part of interstate trade or commerce is guilty of an offense.

“If the act is to be taken, literally, its scope is very wide indeed. It has been frequently contended that by the literal enforcement of the act, honest men, conducting their affairs justly with reference to the rights of competitors and of the public, might, at the election of the prosecutor, be adjudged to be criminals and convicted and punished as such, and that the very freedom of commerce, which it has always been the policy of the nation to foster,

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would be destroyed by the very act passed to promote and preserve it untrammelled. It was also claimed that the statute instead of being an instrument of destruction, the enforcement of which would thwart its very purpose, was a beneficent one to preserve the freedom of commerce and the liberty of every one freely to engage in trade, as well against his own contracts, unreasonably restricting his freedom, as against the wrongful conduct of others, and that the statute applied to the commerce within the jurisdiction of the Federal government only the doctrines of the common law, and that the words used in the act must be given their legal meaning, and further, that if given literal construction, it was void, because Congress, as it was said, had no power to denounce as crime ordinary business transactions which always have been recognized as proper in trade and valid at common law, and also because the act contained no specifications by which it could be understood, and because no one could know beforehand whether his business was lawful or a crime. It has also been urged that, even if valid for the purposes of the application of a civil remedy, it is nugatory as a criminal statute by reason of its uncertainty and indefiniteness, whether or not the word 'unreasonable' or 'undue' be read into the act.

"It seems that the contentions of the parties, the uncertainty in the minds of business men and members of the Bar, together with the misapprehension of the lower Court of the meaning and effect of its former decisions, and a just regard for the great interests directly involved, as well as those liable to be affected, fully justified the lower Court, even if possible to decide the case without so doing, in considering, at large, the text of the act and its meaning. The time had come when reasons why they ought to be permitted to know the opinion of the Court of last resort with respect to the meaning of this act.

"Among the criticisms of the decision it is said that the construction given introduced the word 'unreasonable' into the act, leading to uncertainty in its enforcement, and amounting to judicial legislation; that the Court has done what it had heretofore said it could not properly do, what Congress has refused to do, and what the President advised ought not be done. A careful study of these decisions indicates to my mind that these criticisms are

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unjust, and that in point of fact the Court has not read the act as if the phrase 'restraint of trade' were 'unreasonable restraint of trade' or 'undue restraint of trade' or the like.

"It seems that the Court adopted no new method of reading the law, and that a careful examination of the decisions will show that the well-established rules of statutory construction have been faithfully followed; that the act has not been emasculated or impaired; that the public policy which it was intended to promote has been carried out; that no form of contract or combination or device or scheme to effect monopoly, or to accomplish the evil intended to be prevented by the act, can escape condemnation of the law."

Had I at that time anticipated the eminence in store 165 for these two aspiring lawyers, I might have hesitated, but not being advised as to what was in the lap of the gods for Brothers Butler and Cotton, I projected myself into the discussion, and said:

"It strikes me that under the decisions as now made, there is more uncertainty for any corporation than there was before. Who can say, under this new construction, whether the contracts and arrangements and combinations made by any of the great trusts are or are not in violation of law? Who can tell until their case has been tried and submitted to the Supreme Court of the United States, which, when submitted, may be constituted differently than it is now, and whose rule of reason may be entirely different than now, whether or not the men engaged in that business are criminals under the law or otherwise?"

"Mr. Butler can give his opinion, Mr. Cotton can give his opinion, but no one will know until the particular Supreme Court sitting at the time determines; and if that be not uncertainty, gentlemen, I would like to know what uncertainty is.

"The real vital objection goes right to the fundamentals of this government, and that is that there shall be three departments of government, a legislative, a judicial and an executive, with well defined functions. The Supreme Court, in spite of the ingenious arguments made here, makes it appear otherwise. In the last decisions the Supreme Court does take the

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soul out of the 166 Sherman Anti-Trust Act—I mean, recent decisions. The Supreme Court actually does the thing that Congress refused to do. Mr. Butler says that the word ‘unreasonable’ is not written into that law. But there was no attempt to get that decision from the Supreme Court until after, not only after the Supreme Court itself had said that the word ‘unreasonable’ was not in the law, but after they had made an attempt to get Congress to write the word ‘unreasonable’ into the law. Then the Supreme Court under the so-called ‘rule of reason’ comes along and writes it in there, and destroys that law, letting it stand today practically under the old common law, prohibiting conspiracies in restraint of trade and monopolies.

“The greatest question is not so much whether or not the court reverses itself, as whether or not this country shall be governed, not by legislative department, not by a Congress, not by anybody responsible to the people, but by five venerable gentlemen sitting for life, and above criticism, and above responsibility. If five men who are appointed, who are there for life, have the absolute power and right to destroy a solemn act of Congress and to write into the law a meaning which Congress itself refused to give it, and that declaration shall be the law governing the people of this country, in my judgment it becomes a simple case of despotism, for the very essence of despotism is the right, the absolute right, the irresponsible right to govern.

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“What I mean to suggest, Mr. Chairman, is this, that I do not care what this Bar Association may order or may resolve, or what the men selected to discuss these questions may read into the record. I submit this is a truth, that the Standard Oil decision while eminently satisfactory to Wall Street and the great business interests of this court, is not satisfactory to the ordinary citizenship of this country, but is most damnably unsatisfactory, and has made the court lower in the estimation and in the respect and in the love of the ordinary citizen of the Republic.”

Whereupon Mr. John L. Washburn of Duluth rebuked me as follows:

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“Mr. President, I just want to say one word, and that is that I think these decisions are eminently satisfactory to all citizens, both great and small, who believe in the prosperity of all of the people, and are eminently unsatisfactory to that class of citizens who take joy in tearing down, and no pride or pleasure in building up. (Applause.) I want to suggest that I think Brother Manahan can make the same eloquent argument against the right of the Supreme Court of the United States to construe the constitutionality of any law, and I suspect he would do it. The rest of his argument, it seems to me, simply means that a man cannot find out whether he is guilty or not until he is tried and a verdict is rendered.” (Laughter and applause.) In the debate on the Recall of Judges that followed I replied:

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“Gentlemen of the Bar, the speakers yesterday saw fit to introduce their remarks by an apology for confining their observations to a reading of the manuscript prepared. I feel that I ought, perhaps, at this time, offer an apology for not having prepared a formal manuscript upon this subject. I regret now that I did not. I regret it particularly because of a little incident that occurred yesterday afternoon. To those of you who were not here yesterday it might not be amiss to say that after the discussion of the Standard Oil and Tobacco cases I took occasion to make a few remarks which I thought were reasonably clear. But, ladies and gentlemen, after the meeting adjourned and I started to go down stairs I met Mr. Pierce Butler, and with great anxiety in his voice, he said, ‘By George, I was afraid you were going to agree with me.’

“The initiative, referendum and recall occasionally need explanation as to their meaning and scope, but to fair-minded men who understand them no argument is necessary. Their correctness in principle is conceded, even when the necessity for their application is questioned. Practical statesmen and economists, all who see, clearly, and think with integrity (in fact, I might say many lawyers—), agree that representative government in

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this country is lame in the vital matters of taxation and public service and inefficient for the protection and conservation of natural resources, including manhood in the mass.

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“Now, in saying this, I am not unmindful of the fact that men occupying exalted stations under the present system differ with me in this regard and they support their contention by big boasting about our great country and the wisdom of our forefathers. I think without any exception that the legal departments of every great railway system, the great industrial trusts, the Standard Oil and the Steel Trust, in fact all of the great corporations of this country, including the Wall Street banking corporations, agree with the head of the legal department of the United States (Mr. Wickersham) in condemnation of the initiative, referendum and recall, and particularly the recall of judges.”

This reference to Attorney-General Wickersham, sitting in front of me, politely smiling, as guest of honor, was frowned upon as distinctly rude by my dignified brethren, but I brazenly resumed:

“Now, gentlemen, this harmony between big business and big offices is singular and significant; not entirely satisfactory to some of us. I do not question the qualifications of these men; great lawyers; do not question their learning; but I do suggest their unfitness in matters of state-craft. Their condemnation of direct legislation takes the form of ridicule or evasion; sometimes takes the form of calling names. Now I do not refer to any of the unkind words expressed by my friend Brown (attorney for the Great Northern Railway) in his discussion, because I recognize the limitations of his 170 vocabulary. (Laughter and applause.) But, gentlemen, a little incident occurred yesterday afternoon which I cannot overlook by that charitable construction of the limitations of the speaker. To those of you who were not here, permit me a moment's digression to say that yesterday afternoon after Mr. Cotton had read a very able and comprehensive paper on the Standard Oil and Tobacco cases, and after Mr. Pierce Butler had entered into an animated joint debate with him on the same subject, by another learned and able paper, along the same line,

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there seemed to have occurred a dearth of opposition to the theories they put forth, and always enjoying anything in the nature of a debate, and as some of the other members of the Association who feel as I do in the matter, being more modest and retiring, kept their seats, I made a few observations in opposition to their theories on the question of these great cases. Now those observations were made in good faith by me. And you will pardon me for speaking for one particular thing that was said. I do not do it because it was a reflection upon me, because personally that is a matter of indifference, but I do resent it because it was a reflection upon the integrity and the honesty of a large class of men, whom I love, who take the same position on these questions.

“You will recall that Mr. Washburn said first, that I could speak as eloquently upon any other decision the Supreme Court might make upon any constitutional 171 question, implying by that observation that I was insincere and simply indulging in a facility for expression, and that I did not mean what I said, and that he had no doubt I would speak as eloquently on any other subject. And then, after making that unkind suggestion, and to me, unfair, he coupled it up with the statement that these decisions were satisfactory to the great mass of the people, a matter of debate, and he followed it up by a statement that the decisions are eminently unsatisfactory (I had expressed my dissatisfaction rather clearly), eminently unsatisfactory to men, in his exact language: ‘To that class of citizens who take joy in tearing down and no pride or pleasure in building up.’ Suggestion that the men who oppose these decisions, myself included, took joy in tearing down; no pride or pleasure in building up.

“Permit me, gentlemen, to express unqualified condemnation of that assumption on his part. And I hope that nothing that I said yesterday and nothing that I say today will be so construed by the least active mind here as to convey the impression that I believe in tearing down that which should not be torn down or am opposed to building up anything that ought to be built up.

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“I will not indulge in a kindergarten lesson for Mr. Washburn on the subject of good manners, but I will, with your permission, offer a few remarks, and digress in the line of the recall of judges, to say, that the men who stand for the initiative and referendum and recall 172 are men whose record in that regard and whose zeal for these principles of government, is solely for the purpose of building up manhood and nationality in this country and for the purpose of tearing down nothing but illegal, unholy and vicious growths upon the body politic of America. (Applause.)

“Mr. Washburn wanted to suggest that I believe in tearing down things because in favor of the initiative, referendum and recall. If by the things he wants me to tear down he means the abnormal and illegal growths like the Standard Oil and the Tobacco Trust and similar combinations, and the monopolies, I confess to the indictment and plead guilty to the charge.

“I had supposed that it was the purpose of the administration to destroy that illegal monopoly. I had assumed that the splendid work of Mr. Kellogg in assembling the facts together, showing that that great monopoly was an outlaw and illegal, had been done with a purpose to ‘tear down’ that illegal combination and monopoly. Are we, in exulting with satisfaction upon the statesmanship of those decisions, to agree with Mr. Washburn that the zeal of the government and the purpose of that litigation was not in fact to tear down that illegal combination, and destroy that monopoly? Was it for the purpose of making a bluff at that and getting a decision which does not destroy the integrity of that great combination of capital, or get a decision which will permit the same interest to go on in the same old way; exercising the 173 power of collecting taxes from the people by virtue of a monopoly? Are we to understand, we who oppose this decision, that the purpose of the administration in starting that prosecution and in giving it the impetus that carried it to success as far as showing that combination to be illegal, was not in good faith? I do not think so.

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“There is no intention with those of us who are in favor of the Recall of Judges, to tear down anything legitimate or to destroy property. Why should I want to tear down any honest property? Why should any man who is in favor of these principles want to do that? Can any of you suggest that personally I can enlarge my business or increase my supply of this world's goods by taking a position against the powerful interests of this country upon this question? You have too much intelligence for that. And so I say it hurts me to have my honesty questioned on these matters, to have the question raised as to whether or not I am talking just for the sake of talking; that I believe in anything unfair or dishonest or unjust, or believe in tearing down what is legitimate, just, or for the benefit of the community and humanity. Nothing of the kind, gentlemen. It is because there is deep in my convictions the fear, and it is the result of a great deal of thought, investigation and study, the abiding fear that unless these measures that will throw the government back more closely to the people themselves prevail that this great and beautiful country of ours is drifting right on steadily, steadily to what? 174 Either of two things. If the sanctimonious position of some men is sustained, that we must safeguard and protect the accumulated wealth of the mighty, and make constitution, law, decisions and legislation all point to that end, this country of ours is drifting along the line that means ultimate tearing down; either tearing down according to the examples of history, or dissolution, degradation and decay. Why, my learned friend indulges in the illustration of Aristides and his age, as taken from the romances that come down to us from that period. But there are certain well-established historical facts that are much more worthy of consideration coming to us from the great writers, and much more authentic. Go back to the time, my friends, go back to the time when there was in the fertile valley of the Nile a mighty people, a great people, a prosperous people. What were the conditions there? There is the story told and it is good law, it is good precedent. It is better than the Greek tradition. What happened along the fertile valley of the Nile? Why, a dream was capitalized, according to Wall Street methods. Pharaoh had a dream and thereafter a Jew by the name of Joseph interpreted the dream. He said, ‘Pharaoh, that dream means there are to be seven years of plenty and then seven years of hard times.’ And he suggested the formation of a trust. The elevator

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trust was organized. What happened? A line of elevators was built down the river Nile. And what happened? Joseph was made the Secretary of State, the prime minister, 175 whatever you call him. He was the political boss. And Pharaoh and Joseph did what? Why, they got their lawyers around them and they made a law. They taxed the people one-fifth of all they produced in those seven years of plenty—a pretty heavy tax, almost as heavy, I think, as some of our overburden in this time. One-fifth of all they produced was the scale of taxation. Grain and corn were put in the granary. What happened? Of course the seven years of plenty went by. The people were oblivious of that. And the seven years of hard times came. The people had no corn to eat. They said to Pharaoh, 'Give us corn, lest we perish.' Successively, year by year, the same story, and successively the system of government prevailed. They had their John Marshall and their Chief Justice White of that day to write decisions as to the sanctity of business rights and the sacredness of property. They had possession of the seven years of corn they had assembled. Having possession, it was theirs. Pharaoh's, the king's and Joseph's. It was all their corn, then, although it had been contributed in the form of taxes. But they had their corn, and they had their cabinet, and they had their judiciary, undoubtedly. The people clamored, as Mr. Brown says. They were hungry. They clamored. And when they clamored for corn to eat, sharp bargains were driven by Joseph and Pharaoh. The first bargain brought all the money they had, the gold and silver. The second year brought what? Why, that brought, as I recollect it, the livestock, the cattle and 176 horses that the farmers of the valley of the Nile had, all assembled and all turned into the treasury of the administration. And what next? When they still cried, 'Good Father Pharaoh, give us corn, lest we perish,' he made them turn over all their titles, their lands, to the vested interests. Then what? After that came the man servant and the maid servant and finally, when starvation gnawed at them and they had no corn to eat, the people of the valley of the Nile, the farmers and producers of that day surrendered, what? Surrendered themselves into eternal bondage, and as the Good Book says, from that time to this, it has lasted. They let up on it a little, by making the farmers promise to give for all time after that one-fifth of all they produced. Don't you think they were prosperous, the system of that day, and the aristocracy of that time? What was the

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result? Four or five hundred years of that kind of thing went on and what happened? Two things happened. First, progressivism started; insurgency. Moses was the first insurgent. He recognized the futility of attempting to reform the law. What did he do? He got his followers together and they faced the dangers of the sea. And the sea receded and they found a promised land and wrote there their great history, the insurgents of that day. But what became of the stand-pat citizen? Why, my friends, go to Egypt. They became in time a race of struggling mendicants, a poor, decrepit people as hopeless as their pyramids and as voiceless as their Sphinx. That is what became of 177 them. They did not have the power to overturn the tyranny and the oppression of that day, administered in the form of law and government, and the vice and the luxury of the aristocracy, coupled with the degradation and poverty of the masses, resulted in decay.

“I could go on and give other historical illustrations, gentlemen, but I feel I have digressed too far now from my subject. We admit it is a matter subject to debate. We are willing to debate it in all kindness with our adversaries. But I object and protest against both ridicule and evasion in opposing these principles.

“This evasion and this lack of logic, as I understand it, is especially true of the so-called leaders of the Bar in opposing the recall of judges. Now, gentlemen, I sympathize with these men, I sympathized with Mr. Brown when he was trying to make an argument in opposition to these principles. I did not blame him for having recourse largely to the magazines. It would be unreasonable to expect a railroad, or a Wall Street lawyer, to discuss any political principle with reference to the facts and to employ logic in the discussion. Why? Perhaps fat fees and the memory thereof are more stimulating to the spirit of boasting. A generous clientage, past, present or prospective, seems to make a lawyer so safe and sane as almost to be sanctimonious. He feels retained to revere the past, to offer on occasions like this, at least, judicial masses to the shades of the dead constitution builders and prayers to the precedents connecting the unholy trinity 178

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of Marshall, Morgan and Mammon, the father, the son and the unholy spirit of modern jurisprudence, the refuge of sinners for our frail fraternity. (Laughter and applause.)

“So, notwithstanding the exalted character of the opposition to these principles, I repeat my assertion that no man who believes in a republican form of government can in good faith and in mental integrity deny the need or wisdom of more direct and responsive legislation.

“Political bosses serve the special interests. Political bosses serving special interest have prostituted the legislative functions. Could any man take issue with that proposition, if he dare, with respect for his judgment? In American politics bosses serving special interests have prostituted the legislative functions. And another proposition, Mr. Brown: The courts, by usurpation and servility, have sterilized the creative power of our government under the present system. Corrupt legislatures have passed laws that take the production of the many and make millionaires. Will anybody question that? Those of you who respond in open discussion? and further: When the people protested as best they might under present conditions, and when the voice of public opinion was heard in anger against that oppression, restoration was attempted in part by representatives who bent to the will of the people in election. Did what? Why they tried to restore in part that which had been unjustly taken under form and cover of law; they tried 179 to restore it in part for the public benefit by the enactment of an income tax, enacted under the decisions of the Supreme Court, which were actual decisions as much as that of the Standard Oil is a decision today, confirming the constitutionality of an income tax. Relying upon that law supposed to be sacred, pronounced so by the Supreme Court, Congress passed an income tax law. When the restoration was in part attempted, I say, they passed that law and a flexible Supreme Court reversed itself by the change of opinion over night of one judge and safeguarded the swag, and the result of that decision has kept from the treasury of the United States and in the pockets of those with great incomes from that day to this hundreds of millions of dollars. Again later, by a great effort through representative government, the people forced the Anti-Trust law, making criminal certain conspiracies in restraint of trade, but executives

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ignored it while monopolies waxed fat and powerful, sending their lawyers to Congress and placing them on the Bench. When public opinion compelled executive action and civil proceedings are carried to the court of last resort, again that court reverses itself.

“In that regard permit me to make this observation, that the position taken by Mr. Cotton yesterday in his great paper is absolutely sound as a matter of law and logic, that the Standard Oil and Trust Company decisions reverse the former decision of that court; and the sophistry of Mr. Butler, while it may be interesting reading 180 and all that, and show his great capacity and all that sort of thing, does not meet the point Mr. Cotton made, that the Standard Oil and Trust Company decisions are reversals. Why, the very fact that in the former decisions Chief Justice White dissented and expressed the same views in his dissenting opinion that he expressed in the prevailing opinion of this recent case, shows conclusively his opinion was a dissenting opinion in the former case. If Mr. Butler's position were true that the law has not been changed by this recent decision, then Judge White's dissenting opinion formally would be written as a concurring opinion. But it was not. It was a dissenting opinion, so understood by everybody. Now, then, the Supreme Court in these decisions, I say, reversed itself. I am not going to discuss the legality of that decision. That was discussed yesterday. I am just stating a fact, that it reversed itself on that great law which the people had compelled their representatives to enact for their protection against the tyranny of combinations and conspiracies in restraint of trade. I say they have taken the soul out of that law. I venture this further prediction, that under these decisions the trusts will thrive and continue to thrive and happily thrive, and generously thrive, and will make contributions whenever they can to elect men to office in sympathy with these decisions that destroy them. You will observe, as the years go by, if my prediction is not verified, that the Standard Oil Company, its stocks, its assets, its property and its power, will 181 continue unimpaired under these decisions that are supposed to have destroyed the Standard Oil Company. They will go right on in the same old way and the people will pay for their oil.”

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I interrupt at this point in the recitals from my speech of twenty years ago to emphasize the prophetic instinct of my youth. Under the court's decree in the famous Rule of Reason case against it, the Standard Oil Company did “continue to thrive and happily thrive and generously thrive,” and “its stocks, its assets, its property and its power” did “continue unimpaired.” Even as I write the press carries the news of steps to unite and merge the thirty-three Standard Oil concerns of the combination condemned. And so perhaps I was right in saying then:

“Now courts in all ages, have had a tendency if unrestrained to side with the strong and oppress the weak. Name me some great historical instance, epoch-making decree or judgment that has been entered by the tribunals of judges wherein the weak have been protected from the mighty, and I will name you a dozen where the strong have done injustice to the weak. Judges are human. They are not gods. Even in this country they sanctioned the fugitive slave law for the sake of property rights. They hung Emmett in Ireland to help the landlords collect the rent. They burned Joan of Arc in France to sustain their insane assumption of jurisdiction for God. In Greece they condemned Socrates—why didn't Mr. 182 Brown in his Greek ever study this? condemned Socrates to suicide, why? Because Socrates was an unlicensed muckraker. I might go further. Judicial tribunals crucified Christ because—I don't know why, but I do know that all down the ages the epoch-making decrees of judges summon them to judgment.”

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### **CHAPTER VII HARVESTING**

ONE summer morning in 1912, Geo. Loftus came into my office with a decisive step and said, “That's it, you're the man for Congressman-at-large for Minnesota.”

“If I didn't know you were a teetotaller,” I responded, “I might think you had a drink too much.”

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He frowned, slightly, as he always did when I tried to be funny when he was in earnest; and so I seriously said: "I am a Democrat. What chance would a Democrat have in Minnesota?"

"That's all right, file on the Republican ticket, you are a LaFollette Republican."

"But, George, think, you know I am Irish and to make matters worse I am a Catholic, one hundred per cent, and this state is Scandinavian. The A. P. A.'s would slaughter me."

He chuckled and said, "Bunk. Anyhow you look like a Swede—must be related."

"So you are retailing scandal over a thousand years old," I retorted, "I know the story—how fierce, redheaded, Vikings from the North invaded the peaceful green isle, fell in love with black-eyed Celtic girls they found there and forgot to go home. No doubt, as you 184 insinuate, to that unhappy fact in history I owe my complexion. But it takes more than sympathy to win an election."

Mr. Loftus argued the matter of my filing for Congress, seriously. The people were aroused. Progressive sentiment was gaining ground. Big business had run away with the Taft administration. My railroad and Pullman cases had widely advertised me as the people's lawyer. This publicity in a statewide contest would give me the advantage.

And as my friend urged these and other considerations upon me, I found myself yielding in judgment and inclination, but I made a final gesture, saying, "You have brought me to a lovely mountain top, George, but I can't afford to spend the Fifty Dollar filing fee just now."

"Here's my check," he said, "and more when you need it."

Of all the men I ever knew, George Loftus could give the most graciously, and he was poor.

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And so, to put the matter formally, I field as a candidate for the Republican nomination for Representative at large from the State of Minnesota to the Congress of the United States.

The politicians of the state were not at first inclined to take my filing as a Republican, seriously. I had been such an outspoken Bryan Democrat. "It's a joke," the factions said. But when the reaction from the country press, showing that my candidacy was favorably considered 185

### **VOTE FOR JAMES MANAHAN REPUBLICAN NOMINEE CONGRESSMAN AT LARGE**

186 at the cross-roads, came into the political headquarters of the cities, the wiser heads of the old machine were perturbed. I was subjected to abuse and ridicule. I was a "disturber of business," "a fire brand," "a radical," aye, "a red-headed radical," even worse, "an Irish, red-headed radical," "a chameleon and a joke."

Of course, I had defenders, Senator LaFollette, the founder of the house of LaFollette, wired:

"Madison, Wisconsin, Sept. 15, 1912.

"Geo. S. Loftus, Care Manahan Campaign, Minneapolis, Minn.

"Greetings and congratulations to the Republican Progressives who are supporting Manahan for Congress. He is one of the gamest and ablest fighters for fundamental democracy in America. Elect him to Congress and he will add to the government of your splendid state in the great fight now on to bring government back to the people.

Robert M. LaFollette ."

United States Senator Moses E. Clapp had my speech on the Recall of Judges printed as an official document of the 62nd Congress and ordered one hundred thousand copies to be sent under his mailing frank to the voters of Minnesota.

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Theodore Christianson, afterwards Governor of Minnesota, wrote a leader in his paper:

“ He Never Changed His Color and He Can't .

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“Jim Manahan who is running for congressman-at-large on the republican ticket, was a democrat until about a year ago; was a LaFollette republican for a short time and is now a member of the bull-moose party. He is not, however, the only political chameleon running for office this fall.—Milan Standard.

“We admire Editor Andrew Bromstad, of the Milan Standard, in many ways. He publishes one of the neatest, newsiest and most readable country newspapers in the state. In politics he is consistent, consistently reactionary, we should say, consistently conservative, he would put it. In these days, more than any other, consistency is a jewel—it is so hard to find.

“Brother Bromstad is consistent, with a vengeance.

“But when he calls our friend, Jim Manahan, a political chameleon, he is off the mark.

“Why bless you, Jim couldn't change his color, political or otherwise, to save his soul or to get a seat in Congress.

“And, by the way, the only thing in Jim's make-up the color of which might with advantage be changed is his hair—and he is too Irish to change that.

“Jim is our friend, and take it from us, he is the same Jim all the way through. There is only one color in Jim—outside of his hair—and that's true blue.

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“Jim Manahan has been consistent. He has been as stubbornly progressive as Andrew Bromstad has been 188 stubbornly conservative—and that is the strongest comparison available.

“It is true that he, at one time, affiliated with the Democratic party; it is true that he now affiliates with the Republican party; it is not true that he ever joined the Bull-Moose crowd, although many good and sincere Progressives have.

“But despite his change from the Democratic party, it is a fact that Jim Manahan never changed his views on fundamental political principles.

“In fact there no longer is a single fundamental issue on which the Republicans and Democrats, as such divide. The line of cleavage between the progressive and the conservative wing of each party represents the true party division. There is no difference between a progressive republican and a progressive democrat. A progressive affiliates with one organization or the other, according to his faith in the ability and willingness of one or the other to enact progressive principles into statutes. Parties no longer represent different principles; they are only different instrumentalities for putting principles into operation.

“The wise mechanic does not hesitate to change his tools. If the carpenter finds a saw more effective than the hatchet in doing a certain job, he lays down the hatchet and picks up a saw. Jim Manahan after trying to do his work with a Democratic hatchet, decided that he had done a “bum job.” He picked up a Republican 189 saw—and it is barely possible that he may be compelled to change tools again. But Jim is on the same old job, and will be as long as he is Jim.

“Jim Manahan compelled the railroads to reduce their freight rates in different classes; that reduction saves the people \$2,000,000 per year.

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“He compelled the Pullman Company to reduce its rates; that reduction saves the people \$3,000,000 per year.

“He compelled the express companies to make a general reduction of 15 per cent in express rates; that reduction saves the people \$20,000,000 per year.

“Jim Manahan, private citizen, has compelled public service corporations to make reductions that save the common people \$25,000,000 per year. If he can accomplish such results as a private citizen, is it not fair to assume that he would be a valuable official?

“Jim Manahan ranks with Louis Brandies and Francis Heney as patriots of the new democracy. He is a type of the new citizenship which views public service as a private duty.

“In the name of our country and for the sake of its future; in behalf of its men, its women and its children, who find the burden of decent self-support too hard to bear, we call upon our friends—our friend Bromstad included—to vote for Jim Manahan for congressman-at-large.”

Our campaign committee had little money. My friends were poor. Our message to the voters was put on a postal 190 card. On the face of the card, in addition to the place for stamp and address was a brief summary of my record of accomplishment, signed by the Progressive Republican Committee. The back of the postal, more or less disfigured by my picture, contained my platform and pledge, as follows:

“ It Costs too Much to Live . The laws favoring special privilege overtax everybody to benefit a few.

“ High Prices Hit Consumers , without profiting anyone but carriers, wholesale jobbers and holders of watered stock.

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“ Farmers and Toilers Hold the Sack while bankers and Big Business, by tariff laws, trusts and railroads gather the profits.

“ Everyone is Overtaxed by monopolies and overcharged for public service under existing laws.

“ I Propose to Fight for tariff reduction, lower transportation charges, the destruction of monopoly, a fair chance to men and women who work, and no chance for those who steal.

“ I Stand for the Wisconsin Idea , including the Initiative, Referendum and Recall, presidential primaries and the direct election of United States Senators.

“ I Believe in the People , and to the people submit my candidacy.

“ I Pledge Myself to All Legislation Making It Cost Less to Live .”

This card was printed by the thousand and distributed 191 generously throughout the state with the request that friends invest ten cents for stamps and mail ten cards to relatives and neighbors.

I brought a bundle of the cards home and suggested to my wife that she might mail some of them to her Academy Alumni sisters and other friends. With characteristic zeal she did not stop with social friends. The “butcher, the baker, the candlestick maker” and hosts of strangers were bombarded with my campaign cards, across the corner of which she had written “vote for Jim,” with her initials, “M. K. M.”

It would seem as if a prosaic political document had become freighted with a personal touch. One of these wifely cards fell into the hands of a newspaper man and he made a story of it, with wide and desirable publicity.

Loftus, as chairman of the committee had rare skill in provoking an interest in my candidacy. Reporters who could not be cajoled into writing favorable comment, were

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prodded into attacking me or my platform. Anything to get my name before the public eye. He even put up large signs containing just one word, “Manahan” to get people asking and answering what the word meant. He warned me to use my own name as often as possible in my speeches so that the voters would “get used to it.”

Party lines were not drawn as tight as usual in 1912. The progressive bolt from President Taft and the nomination of Theodore Roosevelt by the new party severed 192 many voters from their old moorings. My campaign was largely a personal affair. One political paragrapher called me a political enigma, saying, “We find it hard to classify this man, Manahan. He is running as a regular Republican, his sympathies are for the Bull Moose; as a matter of fact he is a radical Democrat, and he is talking socialism.”

Afterwards, in Washington, Ollie James of Kentucky told a group of our colleagues of an experience he had, which he considered a good joke on Bryan. In the heat of the campaign he met the great commoner at headquarters in Chicago and told him of being assigned to speak in Minnesota. Bryan said, “That's fine. When you get to St. Paul, talk to Jim Manahan. He will give you the right suggestion.”

“When I got to St. Paul,” Senator James said, “I reported to Democratic headquarters and asked for Jim Manahan. The secretary frowned a bit, hesitated a moment, and asked suspiciously, ‘Why Jim Manahan?’ Feeling that I was on the defensive I invoked the patron saint of the party and said, ‘Yes, Bryan told me to see Jim Manahan—that he would steer me right.’”

“Steer you right! Jim Manahan! Bryan said so! Well I'll be dammed! Say didn't you know that Manahan was the nominee of the Republican party for Congressman-at-large from Minnesota?”

That a Democrat might see fit to change his allegiance was not in the philosophy of William J. Bryan. He voted 193 for Parker, the reactionary, in 1904. He would, I believe, have supported Al Smith, the Catholic, in 1928, had he lived to see that historic day. He

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once told me that he hoped to see a Catholic elected to the Presidency by the Democratic party. It would, he thought, allay a lot of misunderstanding and prejudice.

In my campaign for Congress, an attempt was made without the knowledge or approval of any of my opponents to create religious prejudice against me, as a Catholic; readers of the *Menace*, a poison sheet, appealing to the ignorant, were warned about my "foreign allegiance" and the "power of the Pope," but the voters, generally, were too intelligent to be misled. I spoke in almost every county in Minnesota and when the ballots were counted, on election day, it was found that I had received more than twice as many votes as all of my competitors together, a majority of approximately eighty-five thousand over my strongest opponent.

When I arrived in Washington with credentials to represent Minnesota in the Congress I tried to make myself feel important and act dignified, but secretly I was humble in spirit and somewhat scared. I was a Republican in the records, but by instinct I went to see Bryan. He had been chosen as premier of President Wilson's cabinet and was stopping at The Willard Hotel when I called to pay my respects. There was quite a crowd waiting in the ante-room, but Dan Bride, one of the commoner's old bodyguards in the hectic days of 194 '96, was at the door, and let me in, directly, through a side entrance. Mr. Bryan was happy, already dreaming of universal peace and goodwill under his benediction. He was cordial, as he always was, with old friends, and informal, bidding me sit down while he talked with some callers. When the visitor was a Democratic politician, I was introduced as "an old Nebraska democrat, now one of the new Congressmen from Minnesota." Bryan just assumed that I was still a Democrat and, to tell the truth, I felt, in his magnetic presence, the old love of democracy in my heart.

It was quite like old times in Lincoln. Mr. Bryan was buoyant and informal, visiting with his callers. The responsibilities of his great office were not yet felt; the pressure of international problems had not become irksome; there was seen by him no shadow of the world war. Mankind was at peace and he, a modern apostle of the Prince of Peace, was

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chosen as Secretary of State, of the greatest nation on earth. All was well; the dreamer dreamed and visited with his fellowmen.

Presently Mr. Bryan said he had an engagement at the office of the Department of State and invited me to ride over with him. We took a carriage that had been assigned for his exclusive use. On the way, Bryan expressed exactly my mood, by saying with a broad, boyish grin, "We never dreamed in Lincoln that we would be here, together, in high office, did we Jim?"

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It was easy to love Bryan. He could divide his apple with a playmate.

### [ 2 ]

After some days of timidity and confusion, imposed by the rules and customs of the House and inspired by its venerable tradition, I was able to assume my duties as a congressman with some confidence and enthusiasm. My assignment to a place on the Merchant Marine and Fisheries Committee enabled me to take an active part in the hearings on the so-called Seaman's Bill which Senator LaFollette had successfully sponsored in the Senate. This opportunity of cross-examining witnesses, especially pompous ones, a meddlesome propensity of mine, protected me from homesickness for my law practice in Minnesota, and also, I like to think, helped to pass a great law, making it safer to travel and more humane to work upon the sea.

The emigration bill then pending, with its literacy test, which seemed to me so illogical, and historically so unsound, so selfish and false to the traditions of our liberty, I vigorously opposed. I made my best speech in Congress in opposition to this bill. My colleagues listened patiently, a few of them were enthusiastic and I was satisfied, but the majority voted to pass the bill and President Wilson vetoed it.

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My memory of the House in session is rather vague, seen from the rear in dream light, eight or ten semicircular 196 rows of bald heads resembling ostrich eggs; but looked in the face, from below the raised platform of the speaker, it was a quite terrifying array of attentive faces, illumined by shrewd and challenging eyes. The congress in session is alive and awake in spite of the efforts of scribes and satirists to administer sleeping sickness to it.

Most of my fellow members seen now in retrospect as individuals, are as vague as figures out of focus in the background of a movie screen—just people—but certain members, some of them leaders, I recall distinctly.

A. Mitchel Palmer of Pennsylvania, large, solemn, often stood to one side and posed, during roll call, and then passed importantly out. Jim Mann of Illinois, Republican floor leader and grim as a picture of U. S. Grant, was always on guard, watchful and informed. When he debated, his words were few and his voice harsh, but his reddish whiskers bristled an emphasis that compelled attention. Tom Heflin, on the other hand, had voice and size, but nobody cared to listen. The kindly face of Champ Clark, as presiding officer, the dignity of Oscar Underwood, democratic floor leader, the brilliance of Swagger Shirley of Kentucky, and Victor Murdock of Kansas could never be forgotten by any member of the 63rd Congress; and there was, as it now seems, something prophetic in the tall figure of the lonely Lindberg inviting the assaults of Wall Street by 197 attacking single-handed the money system of the country.

Many other able and patriotic men participated, regularly, in deliberations. All of us, I think, tried from day to day, to do the right thing. It might be in the distribution of garden seeds, or agricultural bulletins, telling farmers how to plow. It might even be in that wonderful Congressional Library, deep in the books, seeking wisdom and praying for eloquence and statesmanship.

Of course, we always felt important, and sometimes hungry and thirsty.

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Since then, I had almost forgotten that Mr. Volstead was one of my colleagues.

I am not willing to admit that the Congress I knew was deficient in statesmanship. It certainly was industrious and intelligent. It enacted a tariff law that was fairly reasonable in its protection to American industry; it created the Federal Reserve Bank as an insurance against panics; it passed the Seaman's Bill; and it would have accomplished much more were it not for partisan politics controlled by interests operating in the vestibules but outside the control of the government. Under our by-party system, functioning through conventions, politics wields a sinister influence that is felt, constantly, by the members and recognized by the rules of the House.

In short, the machinery of the two great political parties outside the walls of Congress exerts an influence within that stifles all individual initiative, and the party machines are controlled largely by the campaign contributors. The individual in office is quite helpless; his party in office is all powerful. Even President Woodrow Wilson, with idealism and intellect of a superb order, found himself defeated and broken as an individualist. Early in his administration, progressive men who sought to co-operate with him were repulsed with chilling formality. When a vacancy occurred on the Interstate Commerce Commission and the friends of George S. Loftus, including several governors and senators, sought his appointment to the place, I conferred with Franklin K. Lane as a member of Wilson's cabinet who knew Loftus well, having tried his case against the Pullman Company, and asked him to help us. Mr. Lane was very cordial and said he would like to see Mr. Loftus get the place, but having served on the Commission, so long, himself, he was reluctant to advise the President, without being invited to do so, and after a pause the great Secretary added, with a whimsical smile, "You would think wouldn't you, that, on Interstate Commerce Commission matters, the President would confer with me, but he doesn't. He carries the whole load."

When, by appointment, I called on the President to, personally, present to him the Loftus letters of endorsement, I was politely received and heard with patience. He thanked me for

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bringing the matter to his attention. 199 He requested me to write him to the same effect. He asked no questions. I was politely and kindly frozen.

Joseph Tumulty, the genial secretary to the President, in the outer office, upbraided me and other progressives for not working in closer touch with President Wilson; for not calling oftener to encourage him; he urged that, inasmuch as the special interests came every day, one big man after another, it was not fair to expect the President, standing alone, to resist the insistent pleas of privilege. "Why," he said, "even Bob LaFollette himself has not called."

I was impressed by Mr. Tumulty's sincerity and reasonableness of his complaint and quickly forgot the frigid reception I had experienced with his great chief.

The ambitious thought occurred to me that I might be instrumental in bringing President Wilson and Senator LaFollette together for the common good of all. I called on the Senator and repeated to him what the Secretary to the President had told me, including the personal reference. My adventure in diplomacy fell flat. The grim voice of the uncompromising statesman was vibrant with indignation. He said, "Mr. Tumulty should know that I never go where I am not properly invited."

I do not believe that President Wilson ever consciously yielded to the pressure of railroad influence but, somehow, and in some way, the Interstate Commerce Commission gradually drifted, as new appointments were 200 made, from its old position as guardian of the peoples' rights, into that of a trustee for safeguarding the dividends of investors in railroad securities. "I am afraid we rowful comment of one of its strongest members, early in the Wilson reign. But still I clung, with the memory of our victories in the Express and Pullman cases have lost the Commission," was the striking and sorsustaining me, to my old faith in the theory of government regulation. I was frankly afraid of socialism, and skeptical about government ownership with its inevitable bureaucracy. Perhaps, I thought the regulation of public utilities would work better if, in some way, we could safeguard the

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personnel of the commission by voting more intelligently. I reasoned in a circle, endlessly, on regulation that did not regulate.

It was a great relief to deliver Chautauqua lectures in the hinterland of the effete east and this relief was unexpected. It just happened. One morning Col. John Hannon, the private secretary and right-hand man of Senator LaFollette, called me on the phone and said, "How would you like to make a speech and earn one hundred dollars?"

"A double temptation, John," I said, "I would be willing to jump over the capitol."

"The Senator wants you to fill one of his Chautauqua dates over in New Jersey," he explained. "It will be necessary to take the fast train for Philadelphia."

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CONGRESSMAN JAMES MANAHAN ATTORNEY-AT-LAW " The Original Farm Lad"

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"It is a big order," I demurred, "I have no Chautauqua experience, but if Bob thinks I can do it, I'll try my best."

"Good," he replied, "and if the Senator is not feeling better by tomorrow, the Pennsylvania Chautauqua Company may ask you to fill his dates indefinitely."

It was a delightful experience for a couple of months. This Chautauqua Association was organized and sustained by wealthy Quakers about Swarthmore College which supplied much of the talent as a cultural experiment.

From day to day, we travelled, from town to town, and at each place, found a big tent, a large audience and all the glamor and atmosphere of an old-fashioned circus. A male quartette sang "On the Road to Mandalay" and I spoke on Representative Government every afternoon. At the evening session the Swarthmore players presented *Twelfth Night* , with Priscilla Goodwin Griffin, as Viola, and Mary Agnes Doyle, as Olivia. As I listened,

each night, to the soliloquies of Malvolio, it was easier to forget the speeches in Congress of my colleague, the Honorable Thomas Hefflin of Alabama.

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### CHAPTER VIII MARKETING

FOR several years preceding the commencement of the World War in Europe economic conditions in this country were tightening down and remedies like the reduction of freight, express and Pullman rates were urged, and here and there, enforced. There also developed, especially in the West, an insistent demand for a revision and equalization of tariff rates which favored special industries at the expense of farmers. Many monopolies, like the Standard Oil, declared intolerable, were prosecuted vigorously; but in vain were all these efforts to secure economic justice and equality for agriculture; in vain the 'big stick' of Theodore Roosevelt and the idealism of Woodrow Wilson; the farmers of the nation, as a class, were not able to make the cost of production, to say nothing of a decent wage or a reasonable profit. Most of them without realizing it, lived upon their capital and found their debts steadily increasing from year to year.

We thought, when we were trying the freight and express rate cases, that the heaviest overburden carried by food producers of the country was in the excessive cost of hauling his products to the consumers, but experience and research taught us that transportation was 204 only one factor, though an important one, in the economic problem of agriculture.

Of course, George Loftus and I, as client and attorney, as partners in business, as political reformers (self-styled) as friends, talked and argued more or less continuously, and often inconsistently, about economic conditions and money-making.

When, in a pessimistic mood, George said, "The big fellows are hogs; they want their snoots in the trough all the time," I, feeling good at the time replied, "Yes, I suppose so, but

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who isn't greedy for money, or power, which is almost the same thing? We are both guilty, don't you think?"

"No, we are not greedy; we are ambitious."

"Ambitious but not greedy! That explains our near bankruptcy, doesn't it George?"

We were talking in my office directly across the street from the Chamber of Commerce of Minneapolis. Down on the street could be heard the roar of the grain gamblers shouting prices at each other in the pit; the "bulls" and the "bears" of the market place fixing values, as Loftus said, by "betting with each other on the future price of imaginary grain."

"But, George," I remonstrated, "the professors over at the University say that grain trades made by outsiders, lawyers, doctors, and others, with an itch to gamble help to steady the market."

"Professors!" Loftus chuckled, "don't handle much 205 grain at the 'U.' I've met a few of them. They are an innocent bunch. They know almost as much about marketing as my new stenographer who asked how the farmers could make 'December wheat' in this cold country."

"Even so, is it not true, as the professors claim, that speculators of the outside public by buying and selling grain for future delivery in May or December or some other month as the case may be, do actually help steady and sustain market prices?"

"No, the effect is neutral for this simple reason. There always is a substantial balance between the number of fools who buy, thinking prices are going up, and the number of fools who sell, thinking the prices are going down."

"Who does make the market?" I injected.

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“The market is made by the professional operators representing big mills, elevators and exporters whose chief purpose is to pay the farmers as little as possible for their crops.”

“What about the law of supply and demand?”

“An old chestnut,” George replied, and countered with a barrage of questions—“who wrote that ‘law of supply and demand’? Where was it written? What is the demand for wheat? Does the hunger of the race fluctuate like the market? Are there not always hungry millions unsupplied? We pray for ‘daily bread’ not for bread the day after tomorrow.”

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“Hold on! Wait a minute,” I interrupted, “Admitting that universal hunger constitutes the demand for bread and is a constant factor, does not the supply of grain vary with the weather and the seasons and thus cause the fluctuations in the market?”

Mr. Loftus, always fair in argument, considered the question for a thoughtful moment, and said, “Perhaps, to a slight degree, but remember that grain is being harvested somewhere on earth every month in the year and there is a constant flow of it into the consuming markets. It is a fairly steady stream, fed by an infinite number of rivulets, and never rises or falls, twenty or fifty points in a few days as the gamblers' market so often does. In my opinion the ‘supply and demand’ theory is pure hokum used to conceal the price fixing of traders at the expense of the farmers. The big fellows, I tell you, are hogs. They want the earth.”

“Well, George, let us admit that the Pit across the street enriches the mighty miller at the cost of the feeble farmers, what are you going to do about it?”

“We might get the Legislature to investigate them.”

The suggestion took root and grew into a broad study of the organization and practice of the Chamber of Commerce. We learned that the market place for grain was virtually

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monopolized by a soviet of traders organized as a private corporation under an act of the legislature passed when Pillsbury, a powerful miller, was governor of Minnesota. Under the sanction and protection of this 207 law the Minneapolis grain exchange was a law unto itself, exercising a sovereignty over its members quite independent of the state and its courts.

Promptly on convening the Minnesota House Legislature of 1913 a committee to investigate the Minneapolis Chamber of Commerce was named and I was selected by that committee as its attorney. My duty was to conduct the inquiry and examine the witnesses.

In the meantime George Loftus had well under way his historic campaign to organize the grain producing farmers of the Northwest behind the principle of co-operation. As manager of the Equity Co-operative Exchange he held mass meetings of farmers and exposed to them the unfair practices imposed upon them by their monopolized market place. When before the legislative investigating committee we proved commission merchants on the Chamber of Commerce to whom grain had been consigned for sale sold the grain to themselves in the name of a subsidiary corporation, Loftus out in the country emphasized the iniquity of the transaction and often said to the stern faced farmers hanging on his words, "I don't know how that looks to you, but to me it looks like stealing."

And when it was shown before the committee that between September 1, 1910, and August 31, 1912, there was taken into the terminal elevators in Minneapolis from the farmers over six million bushels of wheat graded as number 3 or inferior all of which during the 208 same period was inspected out as No. 1 or No. 2 which ranged in price from two to twelve cents a bushel higher than the inferior grades. Loftus did not hesitate to say from the public platform, with grim humor, "What's the matter with you boys?" (He always called farmers, bent and bewhiskered and old enough to be his father, affectionately, 'boys') "Can't you raise more first-class wheat out on the farm? Won't the sun shine for you any more?"

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Then he would chuckle and smile, perhaps address some sombre-faced farmer by his first name, "How about it, Ole? You work hard all summer and raise a carload of wheat; you ship it to Minneapolis for sale; it is graded and sold to an elevator man as 'no grade' wheat, and what happens, Ole?" The elevator man knows a trick or two. He can raise No. 1 wheat on his mahogany desk. He orders your wheat up one spout and down another—out of Bin A into Bin B and presto change, Ole, now its all No. 1 and the fat elevator man is over one hundred dollars to the good. He considers you a very good friend, Ole."

Ole looks glum. His neighbors laugh.

The grain merchants of the Minneapolis Chamber of Commerce were annoyed by the revelations of the legislative investigation committee; they were annoyed, and badly frightened, by the spectacular campaign conducted by Loftus to organize the farmers into a co-operative marketing association; they saw their monopoly of the 209 grain trade, with its enormous profits, in grave danger of being taken from them. They had their backs to the wall. They fought, desperately, to discredit the co-operative movement and to destroy Mr. Loftus and his organization.

When the contest for control of the grain market place commenced, the Chamber of Commerce forces were led by John McHugh, a very able and resourceful man, large, goodlooking, magnetic. Loftus, to the delight of his farmers, used to refer to him as, "My friend, John McHugh, the Chamber's ten thousand dollar beauty."

Mr. McHugh mobilized in a compact and powerful group nearly all of the influential men of Minneapolis, bankers, transportation chiefs, commission merchants, world renowned millers; but, of course, his shock troops were the option traders and elevator men.

To discredit the co-operation of producers in the marketing of their crops, which they shrewdly feared would work, McHugh and his organization set about deliberately to wreck the Equity Co-operative Exchange and discredit Loftus as its manager.

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A rule was adopted by the Chamber, and relentlessly enforced, which compelled its members to boycott grain consigned for sale to the Equity Co-operative Exchange. The credit of the farmers' company was assailed and the bankers of Minneapolis called their loans. Magazines and newspapers were used for the widespread publication of false and misleading statements. Managers of country elevators were persuaded by gratuities and cajolment to make consignments of grain to the so-called 'old line' companies in preference to the farmers co-operative terminal. From day to day, the rivalry increased in bitterness. We thought we scored when we exposed before the Minnesota legislative committee the iniquity of the 'skin grades' and graft in the collection of unearned switching charges. When, early in the fight with grain gamblers monopoly, I was elected to Congress, it seemed as if we had, as George expressed it, "the big boys on the run." I was able to get a hearing before the Rules Committee of the House on my resolution to investigate the Chamber of Commerce of Minneapolis and the Board of Trade of Chicago at which many witnesses were heard. Nothing in the line of legislation was accomplished, but, I recall, however, one interesting bit of testimony that was developed. We were considering the so-called 'law of supply and demand.' Attention was called to the Statistical Abstract of the United States showing that in 1909 the whole world produced 3,581,519,000 bushels of wheat while in 1911 the world production was only 3,540,717,000, being some forty odd million short. The wheat yield of the United States for these same years revealed the same relative situation:

1909—737,189,000 bushels

1911—621,338,000 bushels

a shortage of more than 115,000,000 bushels. Normal conditions preceded and succeeded each of these years. According to the law of 'supply and demand' wheat in 1911, with a short crop at home and abroad, ought to have commanded better prices than

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in 1909, with its over-production, but prices ranged less instead of more for the entire year; a shade over eleven cents a bushel less in value as of December 1.

“How about it?” I bluntly asked the spokesman of the Chicago Board of Trade, “Please explain?”

“An enigma,” he said.

But Loftus, out in the Red River Valley, and at mass meetings of farmers as far west as Montana, with fine scorn shouted, “Supply and demand—yes, supply and demand of gamblers in the pit and not of grain in granaries, fix the price of wheat. These gamblers in grain call themselves speculators and they describe their business by the respectable terms “option trading” or “dealing in futures” but in plain and simple words, they bet on the future price of grain; and by betting in concert, with big money backing them the powerful elevator and milling magnates are able to depress and hold down the price,—almost at will; in consequence, traders thrive, while you farmers live upon your mortgages.

The farmers believed Loftus. He was to them a savior. They loved him; drove miles on miles over bad roads to hear him; cheered him on when he exposed and denounced those who preyed upon them; and they were, like children, happy in their hearts, when he, big and handsome, smiled upon them, while saying, “Now, boys, you are a bunch of boobs.”

Loftus conducted his campaign for co-operative marketing out in the open, before committees of legislature or congress and before the farmers in mass out on the prairie, but the Chamber of Commerce, under the leadership of John McHugh as its executive secretary, did its deadliest fighting secretly and in the dark; whispering doubts as to solvency; accusing the Equity Exchange of selling farmers grain below value and of charging double commissions; and finally by inciting vexatious litigations and adverse publicity all over the trade territory of the farmers organization.

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What was designed as the finishing stroke to co-operative marketing on the terminal market places and the destruction of the Loftus influence with the farmers of the Northwest, was an extraordinary proceeding brought in behalf of the State of North Dakota, on the relation of Henry L. Linde, its Attorney General, for the purpose of annulling the charter and under a receivership winding up of the business and affairs of the Equity Co-operative Exchange. This suit was brought and prosecuted by Edward Engerud, an ex-judge of the Supreme Court, in the employ of members of the Chamber of Commerce, but specially deputized by Mister Linde as an Attorney General for the purposes of the suit. The proceedings, supported by some fifty or more affidavits, signed by members of the Minneapolis Chamber, were prosecuted with great vigor and wide publicity. It was a life or death struggle.

Our strategy in defense, suggested by Mr. Loftus, was to bring to the place of trial every farmer in North Dakota and Minnesota who could be persuaded by our cry for help to come; to offer as proof of our vitality and solvency the concrete evidence of a multitude of men in desperate earnest; to answer the cold affidavits of Minneapolis traders by the hot temper of outraged farmers in open court asserting their faith in co-operative marketing.

“Yes,” I said to Loftus, “the judge will listen to five hundred men sitting silently in his court room.”

Grimly, George responded, “That's true, and the Attorney-General is white-livered. When he sees the crowd he will get on the fence.”

“But Judge Engerud is McHugh's man Friday and a hard-boiled lawyer,” I responded. “He will try the case for all it is worth. If we can't show that the Equity is solvent a receivership might be ordered in defiance of your thousand farmers.”

“A heavy insolvency,” said George with a shrewd and knowing glance, “could be quickly lifted by a thousand husky farmers. Fifty dollars each would do the trick.”

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When the trial opened, the big court room at Fargo was crowded beyond capacity, even the windows and doors, hallways and stairways were packed with farmers, 214 all as yet, easy going and good natured in spite of the discomfort.

When the case was called by the clerk I managed, for the purpose of getting for our interpretation of its significance a first place in the mind of the court and in the headlines of the newspapers, to offer a technical objection in support of which I said what I had to say about the Chamber of Commerce and not the State of North Dakota being the real plaintiff, while the farmers of the Northwest who believed in co-operation, and not our little exchange, were the real defendants.

On the conclusion of my remarks, to my surprise and the astonishment of the court officers, the crowd of spectators broke into vigorous applause. The presiding judge, a dignified and pompous personage, by the name of Pollock, was shocked and astounded; he sternly pounded with his gavel to restore order and silence; such misconduct would not be tolerated in his court; he threatened to clear the court room if such unseemly disturbance was repeated; he lectured the farmers and they under his anger and reproof, themselves, grew stern and hard.

When court adjourned for noon recess and the crowd surged down the broad stairway, I overheard scornful laughter when a big voice said, "If he puts us out we'll duck him in the river."

I was thoroughly alarmed and frightened.

When the progress of the trial had narrowed the issues down to the simple question of whether the Equity 215 Co-operative Exchange could pay its debts, George Loftus took up that question of solvency with characteristic directness and wisdom. He called an evening mass meeting of the farmers. It took place in an old church building. Loftus, in his talk, frankly admitted to the farmers that their co-operative association was in danger. He

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had spent a lot of their money in resisting the assaults of the Chamber of Commerce. He reviewed the campaign he had made in behalf of co-operation in marketing. He told the story of the lawsuits they had suffered. It was time to render an account of his stewardship and have their approval or disapproval.

In his oratory Loftus was unique. He felt his way into the consciousness of his hearers, but never lost sight of his own steadfast purpose. He went with his audience, but lead it all the way. At times, like a solid business man, he stood relaxed, and in conversational manner explained the transactions involved. When the crowd wearied a bit he felt it, instantly, and at once changed his style. He referred to the bad faith batch of the litigation. His large body grew rigid and erect; his face stern; voice vibrant; his eyes flashed; he struck hard blows with short ugly sentences. With the dullest of his listeners aroused, he resumed his exposition, now in a jocular vein as he walked about the stage and called by name on Ole Olson or some other alert farmer in the audience for confirmation.

The hour was getting late but neither Loftus nor his 216 audience were aware of it. He did not hurry his slow-moving farmer friends. He invited questions. He provoked short debates. They talked things over. Loftus finally said the only sure way to win the law suit was to make the Equity Co-operative Exchange solvent beyond question; to restore its depleted capital; to bring into court tomorrow money and pledges enough to more than cover all doubtful assets. How many would help?

“Put up both of your horny hands Louie Noltemeier—that's right. Everybody's hands are up.”

And Loftus continued with both of his long arms extended like a cross, to earnestly exhort them to come to the rescue of their company and their cause. Their pledged hands, raised to God, was, he said, assurance enough but the court would want it in writing.

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Presently the mood of the orator changed. He joked with different men, good friends, roughly. "Have you a check book, Pat?"

"An sure I have."

"But is your name good at the bank, Pat, for five hundred dollars?"

Everybody laughs and George resumes his running-fire talk with the audience with occasional comment upon their exploiters, and now and then a sly poke at the court for considering at all the question of insolvency.

On one of his trips down the center aisle, talking in the middle of his audience and in all directions, Loftus 217 exclaimed, "I tell you, my friends, there is something rotten in the state of Denmark."

A moment later as he talked he laid his hand affectionately on the blond and touseled head of a stocky farmer, who petulantly jerked away. With surprise George paused and quietly asked, "Are you mad at me, Nels?"

"Yaw, you say Denmark, my country, is rotten. No sir-e-e, she ain't so."

"Oh, Nels, Nels Haughen, you misunderstood me. I was quoting what a fellow said in a book. Who was that fellow, Jim?" he boomed out to me in the rear of the church.

"Shakespeare," I answered.

"There you are, Nels. It was Shakespeare who said that about Denmark, but I'll change it and say, 'There is something rotten in the city of Bismarck.'"

The crowd cheered. Nels grinned, happily, as George tousled his Danish head some more.

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The next morning we brought into court in cash, checks, notes and valid pledges over \$35,000. The case was dismissed and the Equity Co-operative Exchange resumed its gallant struggle for a place on the terminal markets.

George Loftus continued to be, and still is, the inspiration of the co-operative farmers of the Northwest. Up and down the Red River country, across the broad prairies reaching to Golden Valley and beyond the Bad 218 Lands, to the Canadian border and perhaps across it, early and late, tirelessly, he canvassed for grain and pleaded for unity and faithful co-operation. Ignoring the advice of friends he worked too hard, under a burden, too heavy. He was assailed from all sides by malicious tongues; irritated by envy and intrigue in his own organization; exhausted by long journeys and protracted debates; tired to death, George Loftus yielded to a malignant tumor beyond the skill of surgeons. In his untimely death, the farmers of America lost a great leader,—and I lost my best friend.

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### **CHAPTER IX ORGANIZING**

“GO HOME and slop your hogs,” bluntly, a member of the legislature at Bismarck replied to a committee of farmers seeking relief from the monopoly of their markets. “Go home and slop your hogs” became a battle cry in the revolution of farmers that presently swept across the prairies and plains of North Dakota.

Arthur C. Townley, a bankrupt farmer from Beach, with the brains of a socialist and the instinct of a banker, had witnessed from the side lines the gallant struggle made by George S. Loftus to organize the farmers on a co-operative basis, and recognized more clearly than Loftus did the inherent weakness of voluntary co-operation in economic warfare, its looseness and lack of appeal to selfish instincts. As a profane and hard-fisted dreamer, Townley proposed to organize the farmers into a Nonpartisan League and to capture the machinery of the government itself. “Make the rubes pay their god-damn money to join and they'll stick—stick 'til hell freezes over,” he said to his organizers with

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many picturesque and even more profane variations. He drilled his men how to “organize” the farmer in his barn yard; how to “surround the rube,” one man in front and one on each side, facing him, and all urging him to join the farmers' 220 non-partisan league, at the same time agreeing with him, good naturedly, on everything else. “Find out the damn fool's hobby,” taught Townley, “and then talk it. If he likes religion, talk Jesus Christ; if he is against the government, damn the democrats; if he is afraid of whiskey, preach prohibition; if he wants to talk hogs, talk hogs—talk anything he'll listen to, but talk, talk, until you get his god-damn John Hancock to a check for six dollars.”

The farmers of North Dakota, however, were, as a rule, without funds in the bank sufficient to pay even a six dollar check. Townley, therefore, instructed his organizers to take post-dated checks, bearing date and payable after harvest, and, as these checks accumulated they were pledged as collateral for loans from friendly banks. Ford touring cars were bought, wholesale, and as rapidly as Townley could hire and train organizing crews to man them.

Supplementing the work of the organizers, and sometimes to pave the way for them in new territory, mass meetings and large picnics were held. At these gatherings Townley and other seasoned campaigners, mostly of socialistic training, spoke, at length, and convincingly, of the wrongs done to farmers and the necessity for organizing legislative relief. To make the work of his non-partisan league enduring and to stimulate enthusiasm in its membership, Townley established newspapers and otherwise made use of the printed word.

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In form, the National Non-partisan League, as the organization was formally named, was democratic, but in fact an executive committee of three, of which Townley himself was chairman, ran the affair, with despotic thoroughness. The other members of this powerful committee were William Lemke and Fred Wood. Lemke was a lawyer, able, incorruptible, with an inherited sympathy for farmers. Wood was a real farmer and Townley's echo.

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A state convention of the league to select candidates for office under rules, drafted by Lemke, which insured deliberation and democracy in making every choice, was held behind locked and guarded doors. This convention was happy in its selection of a candidate for governor, naming Lynn J. Frazier, a farmer educated in the University and blessed by the substantial figure and confident pose of a statesman. He looked like a bishop. But Farmer Frazier was at that time untrained and inexperienced as a public speaker. Since leaving college, he had been too busy on his farm making a living to take an active part in public affairs. He had, literally, been called in from the field and made articulate by the removal of his overalls. Naturally, for a time, he faltered in his speech, but never in his leadership. In an easy quiet way, he, and not Townley, was the candidate for governor of North Dakota, and leader of the party.

Townley, the organizer, and Lemke, the statesman of the organization, had the sagacity, however, to recognize the wisdom of enthroning Frazier, the farmer, as the political pontiff of the movement. The job they assigned to him was to meet the voters and sell himself by his wholesomeness and unassumed solidity. Public meetings were widely advertised and usually held out of doors. Farmers in their old "flivvers" often drove from fifty to one hundred miles to see and hear their brother farmer as candidate of their non-partisan league for governor. He stood before them, sunburned and baldheaded. His voice was firm and persuasive. He spoke briefly and the tired farmers loved him.

As speaking partner of the candidate, it was my duty to argue for the League and explain its purposes. Up and down the state, from the Red River to the Bad Lands, we preached the iniquity of monopolizing the market place; we advocated state mills and elevators to break the grip of the Minneapolis Chamber of Commerce; we urged the duty of farmers to organize for self-protection and pointed out to them that their prosperity would always be measured by the degree of control they held in the government.

The farmers' ticket won in the primaries and on election day, Mr. Townley and his organization quite suddenly found themselves in control of one of the sovereign states.

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William Lemke, especially, assumed responsibility for good government. As the legal guide of the executive committee, he gathered about him a corps of experts in legislation and economics and attended the 223 legislature as a super-lobby to guide in lawmaking. I gave as much time as I could spare to drafting the legislation necessary to carry out the League's program. We were called socialists and North Dakota was the subject of commiseration and abuse in all of the powerful organs of public opinion of the whole country.

Farmers in neighboring states, nevertheless, were greatly encouraged by this evidence of power shown by organization. Yielding to the pressure of many invitations, Townley's ambition became national in scope and the headquarters were moved to St. Paul. In launching the league in Minnesota, however, Townley, with ego and lust for power and overstimulated by his North Dakota success, failed in sagacity by ignoring, in fact repulsing, most of the progressive leaders of the state. Negative characters without strength or standing in the state at large were selected by him, and used as a dummy committee. The farmers in the more prosperous parts of the state, naturally more conservative, were reluctant about joining a radical movement sponsored largely by outsiders. In the Minnesota campaign, Townley's marvelous capacity as an organizer was sorely tested. The World War, breaking over its original boundaries and involving us all, added to the League's organization difficulties. Men and institutions who had been preying upon the farmers saw their opportunity to discredit their critics and became super-patriots, over night. No doubt many of these self-styled, one hundred per cent Americans 224 were in good faith, but it is difficult to avoid the suspicion that their zeal in branding Townley and his organizers as Pro-Germans was based quite as much on economic as on patriotic impulses. Monopolists do care for their country, of course; but they also love a lusty balance sheet. Many of Townley's men were assaulted, some were, under the pretense of patriotism, tarred and feathered.

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The Non-partisan League was, by hired scandal-mongers, branded as disloyal and no one connected with it was safe. Treason was a common charge.

[ 2 ]

"Let's walk home," cheerfully suggested my wife.

"Oh, mother, let's don't walk, today," demurred our daughter who had, with us, just finished a Sunday dinner at the St. Paul Hotel.

"Mother is a clear majority in our family," I diplomatically announced, "and so we walk."

As we approached Rice Park we saw a vast multitude and heard cheering. A platform had been constructed opposite the post office and facing the park and around this platform stood a semi-circular crowd of several thousand men. We crowded in back of the platform to be able to hear the speaker and there encountered Mr. A. C. Townley, standing, alone, as a spectator, with an inscrutable smile on his hawk-like face.

"Is this one of your sideshows?" I asked.

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"No such luck." And, with flashing eyes, he added, "If organized labor had sense enough to back organized farmers they would both get a run for their money."

I wondered; and, listening to the speaker on the platform, learned that the labor union men of the Twin Cities had assembled in mass meeting to show their sympathy for the striking streetcar men.

Looking beyond the speakers' stand and into the upturned faces of the tense crowd of toilers, I said to myself, "These men are in earnest. It means more than sympathy for the

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streetcar union. Each man is fighting for himself” and the thought came that even as labor union men their horizon was too narrow.

My reverie was interrupted by the committee. The chairman said, “We have been looking for you, all day. The boys have great confidence in you. Won't you make a short talk? It will brace up the wavering ones.”

“But,” I protested, “I don't know enough about the trouble to publicly discuss it.”

“It's the right to unionize; to have their own organization; to wear their union button which the Safety Commission has forbidden,” he said, and I replied:

“The right to organize is as absolute as the right of work; the right to life”—

Townley interrupted bluntly, “Go to it Jim, and give 'em hell for holding their god-damn meeting out here in the cold. Tell 'em if they want another meeting, I 226 will hire the Auditorium. The farmers are with them in this fight.”

Presently, I found myself on the platform saying, “It is encouraging to find laboring men so firmly united in asserting their right to work and to organize. I bring you the sympathy of the organized farmers of the Northwest; more than sympathy, Mr. Townley, the President of the Non-partisan League authorizes me to say that if another mass meeting of toilers is necessary he will hire the St. Paul Auditorium. Townley and his farmer organization are wise in supporting organized labor. When city workers enjoy good wages they buy more bacon and beef and bread, and farmers prosper accordingly. On the other hand, if the farmers of the country are compelled to sell too cheap, they quit their fields, and crowd the cities looking for jobs, your jobs. You see, my friends, the welfare of all who work in the city or out on the land is of one piece; and the welfare of all classes is measured out by the machinery called government. The streetcar company and its franchise to use our streets for profit, is all a matter of law, and law making, of government and of voting. So too is the Public Safety Commission a creature of law, but that does not give it the right to

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say you shall not, while you work, wear your union button on the lapel of your coat. That commission was created for war purposes—not to play the childish game, button, button, who has the button?

“Why, I have a button here of my own. It is the Nonpartisan 227 League button, red, white and blue. Across the red is written ‘farmer’; across the blue, ‘labor’ and across the white band between farmer and labor is written the battlecry, ‘We’ll stick.’ Now I give you our button and its gallant motto and I ask you shall any pinhead on any commission named by any governor say to us ‘you shall not stick together’?”

“There is no conflict between your program and ours. Why don't you vote to own and operate your own streetcars. Who owns these streets? You, the people, own the streets of the city. Why don't you use them by municipal streetcars operated at cost with a decent wage scale? Strikes would be unnecessary. Mass meetings of shivering men in protest would never tax the patience of men, and I admonish you to be patient. Striking, without any prospect of success, means endurance; firmness with courage is called for, but, again, I warn you against any sort of disturbance or of violence. Be patient and stick it out. Let your blows be struck at the ballot box. Unite with the farmers and wage war with votes on election day for, in the final analysis, it is all a matter of law and government.”

My talk did not take over five minutes and on its conclusion the crowd dispersed, many moving toward Wabasha Street and the congested part of the city. Witnesses for the state who testified at my trial described how a street full of people at Seventh and Wabasha, and at other points, obstructed the passage of street cars, how 228 boys ran from car to car breaking the windows, how motormen and conductors were jeered and in some instances assaulted. There was, in truth, a riot that afternoon and all the discrediting details were published, daily, under the glaring headline “Manahan Trial.” It was humiliating to me, and, knowing that I was innocent, I suffered under the assault. I could not understand it. My law partners and attorneys assured me that there was “nothing to it.” Tom Sullivan, a brilliant young attorney very popular in labor circles, said, “We can

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bring in a thousand witnesses who will testify that you warned them against violence.” Thomas C. Daggett, leading counsel in my defense, a thorough lawyer who never lost his head in the stress of the trial, encouraged me by his confidence. But I could not forget the significance of the fact that the personnel of the Grand Jury that indicted me disclosed a special influence at work. “How did it come to pass,” I asked myself, “that the chairman of the Grand Jury was secretary to the president of the Northern Pacific Railroad whose son was superintendent of the St. Paul City Railway Company? Did it just happen,” I worried, “that a jury panel of twenty-three citizens, presumably chosen from the general citizenship of the county, should consist of five bankers, six insurance officials, four wholesale merchants and manufacturers, six corporation general managers and brokers, one railroad official, one Chamber of Commerce man, and not a single farmer or worker of any 229 craft or calling?” “If the enemies of organized labor and of organized farmers, could influence the selection of a Grand Jury” as I thought it had, “What might be expected of the trial jury?”

I was not frightened but deeply concerned and anxious. Jim Markham, the trial lawyer of the attorney-general's staff, was sent down from the state house to help in the prosecution of the case. He had a novel theory of connecting my Rice Park speech with the rioting that took place, elsewhere, later in the day. I was an adept in the art of speech, a master in mob-psychology, like Mark Antony, I could defend Brutus as “an honorable man” in a way to make the very stones of Rome to rise and mutiny, that I could and did, he argued, plead for peace and patience on the part of the strikers with such cunning and skill as to stir them to hate and deeds of violence.

Happily, there sat upon the Bench at my trial an able and fearless judge, Frederick M. Dickson, who brushed aside the World War influence in the court room and the sophistry of the attorney-general. In dismissing the indictment he said:

“I think the state has produced all the evidence it possibly could produce, it had a very free and wide investigation of this matter, and about all, or the substance of all that has

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been shown that Mr. Manahan said is that he sympathized with Union Labor. You must bear in mind, of course, that this was a meeting of organized labor to aid their fellow craftsmen of the Street Car Union or to sympathize with them at least and protest against the treatment that they had received in which they claimed they were wronged—bearing that in mind, Mr. Manahan said that he sympathized with Union Labor, that it was a good thing, that he thought that it operated and resulted in benefit to the laboring men and improved conditions—better pay and shorter hours, and then as an instance of its advisability and benefit to organized labor, he referred to the organization of farmers up in North Dakota known as the Nonpartisan League, told what a benefit that had been to them, told something about their organization and advised the principle that laboring men ought to co-operate with the farmers; and criticised the Safety Commission. And there is some evidence that he spoke rather contemptuously of them—called them “pinheads.” He said that the order which they had made relative to buttons was not legal in the sense that it could not be enforced in any court of justice and they had no legal authority behind it. And I do not understand that the Public Safety Commission differs with him on that principle, because they have explained the reason for the making of that order in the newspapers. I do not understand that the Public Safety Commission, among themselves, ever thought that this order was an order which could be legally enforced in any court. And Mr. Manahan claims that it was not an order which could be enforced in any court. Then he said something about the dividends on watered stock and in a rather flamboyant and dramatic way announced a principle of law with reference to the ownership and control of the public streets. He said that the Street Car Company did not own the streets but that they belonged to the public, which is true, and which is a principle which has been more than academically recognized ever since 1884 when the Hon. Jeremiah Black made his famous speech to the Judiciary Committee of the Pennsylvania Senate, announcing the principle that quasi-public corporations and public service corporations are servants of the people and do not own the streets or the land through which they run, that they are to serve the people and were the servants of the people. And that is about all that I can recollect that he said.

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“Now, the question is, whether or not any twelve, reasonable men would believe from that evidence and would be convinced to a moral certainty and beyond a reasonable doubt that those words spoken to that crowd, shown to have been a quiet and orderly crowd, were in any degree a contributing cause of the riot. It seems to me that it would be absurd to submit the question to them, that it cannot be said that he encouraged it or advised it or induced it in any degree. It must have been caused from some other source. At least, it seems to me that there is absolutely no evidence here upon which any conviction of Mr. Manahan could stand or that the Court 232 could possibly let it stand, and therefore I think the motion should be granted, and it is granted.”

### [ 3 ]

The trial in which I was engaged at Lakefield was not an ordinary lawsuit. Nominally it was a hearing on a charge of sedition, but actually the struggle was economic and political. The capitalists were profiteering; the farmers were in revolt; and propaganda was rife. Under the spur of hate, otherwise kindly folk glared at old neighbors bearing names of Teutonic origin. Thus it came to pass that a lawsuit involving the question of the right of free speech was really the occasion for a riot.

As a lawyer of the old school, trained to respect precedent and revere the Constitution, it was hard for me to realize the new order. Public opinion was drunk, but I did not sense it. I invited disaster.

The courtroom in the village was crowded to the doors. Most of the seats were taken by the town idlers, morbid seekers after excitement; but the aisles and windows were packed by stern-faced farmers who came in late and angry.

My client was an Englishman named Gilbert. Shortly before, he had made a speech to a group of farmers at Lakefield, Minnesota. He had urged the organization of the Non-partisan League, and the importance of sticking together. Being a socialist, he had

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condemned imperialism, whether in Germany, in England where he 233 was born, or in America, the country of his choice. He denounced force.

“War,” he said, “is always the outgrowth of greed for property and power, and always a crime against humanity. But now that we are at war, we must do our best—our very best, to win.”

He urged the cultivation of every possible acre of land and concluded with the dramatic declaration,—

“The farmer boys who stay at home and toil in the fields to feed the fighters are just as patriotic as their brothers at the front. Armies must eat; food wins fights.”

For this speech, Gilbert was on trial. Main Street, fearing farm organization and co-operative stores and marketing, was strong for his conviction—as a matter of patriotism. The farmers were friendly to Gilbert and gladly signed his bail bond. As his lawyer I was overconfident. I had not yet felt the grim power of hate.

The judge was a small man, almost out of sight in his big chair. His voice was small. He was afraid of the sheriff who selected the jury,—a big, lumbering, slow-thinking Norsk. The prosecuting attorney was supreme; no matter what he said, judge and sheriff nodded approval in unison. He owned the hand-picked jury. But I failed to see it. As a seasoned, if not hard-boiled lawyer, it seems odd that I should have smilingly and confidently put my head into the lion's mouth that day—then deliberately have twisted his tail.

When the state's attorney, before any evidence was 234 offered, called my client a Pro-German, I expressed surprise that the young and sturdy lawyer across the table was not, instead, across the water fighting real Germans. The exchange of words revealed the temper of the crowded courtroom—there were hisses and cheers. The room grew stuffy and hot.

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As witness after witness was examined, the tenseness grew. I may have been angry myself. I know I was hot. When the town boys in the witness box referred to Gilbert's farmer audience as "a bunch of hicks," I asked hard questions, "Was the war a just war?" "Then, why did they not enlist?" "What was socialism?" and other questions to reveal their ignorance and their poolroom outlook on life. As the day wore on, I felt that I was smashing the state's case, and the enthusiasm of the farmer part of the audience helped my self-deception. Gilbert, too, was jubilant when court adjourned for supper. We had made the prosecution ridiculous. The farmers, in a jovial mood, left for home to milk their cows, and were, no doubt, dreaming happy dreams, a few hours later, when my own time of trial came on.

The courtroom was again crowded when we returned for the night session, but I missed our farmer friends. From all sides, hostile eyes glared at us. Judge, Sheriff, county attorney, and even the jury, were late. The crowd, silent and ominous, still glared.

—Over an hour passed. I found myself getting nervous. An overdressed woman, sitting near the front, 235 loudly whispered "Every Hun should be hung." Why don't the sheriff and the judge come? It is after nine. The crowd still glared and was getting bigger. Men and boys in windows, standing on the steps of the judge's bench, leering; high school youngsters, crowded around our table—every face, unfriendly. Gilbert whispered, "Jim, they will crucify me if they can!"

The judge, court officers, jury, and a large number of new witnesses marched in and grimly took their places. No apology nor explanation for the delay. The crowd still glared.

Witnesses were examined. They knew their story better than the former witnesses. They no longer contradicted each other as to just what Gilbert said in his speech. For three long weary hours, I struggled to break down their obviously concocted story. I was very tired. I asked an adjournment until morning. It was denied. The crowd was getting bright-eyed,

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there were many harsh laughs. Hate and excitement were everywhere. It was a Roman holiday.

At midnight a man near the door stood on a chair and called out, "Your Honor, may we do something for the Red Cross?"

The little judge nodded his timid head. The man, now holding aloft a large bird-cage with a parrot, said:

"I have here a rare bird, his name is Kaiser Bill. He talks German. How much am I offered? Bid on Kaiser Bill for the benefit of the Red Cross!"

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I read in the excited faces of the crowd, as the man talked, and in the glares at us, when he finished, that a trap had been set and elaborately staged. The midnight hour and hostile crowd—overheated room and tempers—war and hate—tired nerves.

The auction went on. If we bought a German parrot named Kaiser Bill we were Pro-German. If we refused to bid for the Red Cross, we were Huns. I must decide instantly. Hostile faces all around demanded an answer.

I shouted, "Five dollars for the Red Cross!"

Some one said, "Six!"

I said, "Ten!"

A voice near the door bid "Eleven!"

The auctioneer swung the cage to and fro repeating, "Is eleven the limit for the Red Cross?"

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I shouted, "Fifteen!" And paid over the money.

The bird was handed to me. I jumped upon the table and offered the bird of ill-omen for sale again, for the Red Cross. I called upon the judge to open the bidding, taunted the state's attorney for his silence. I lashed the crowd as "lip patriots" and "tightwads." I was mad, I think.

I heard Gilbert say, standing on the floor behind me, "Mr. Sheriff, you can't arrest me at this hour."

A new warrant had been issued. They wanted to throw him in jail when no farmers were about to go on his bail. It made me very angry. I called out, "Is there 237 one decent man in this town to sign Gilbert's bond to appear in court next morning?"

Silence! Glaring eyes! I said, trying to be calm, "If you throw this man in jail, tonight, I will ask the farmers to forever boycott this town!"

I remember getting out of the courtroom with a nervous group of men and women who crowded out the back way. I knew a hostile mob was in front, and tried to gain Main Street, farther down, by running down an alley. It was dark. I fell into a ditch. With my heavy coat on, I could hardly get up. I was very tired. When I got to the corner near a lamp post I heard a boy shout, "There he goes!" I turned and ran.

A hotel was at the corner. Its door was before me. The mob came rolling around the corner. In the fog and darkness each figure looked gigantic, monstrous. Burly ruffians seized each arm. A gruff voice said, "Damn your soul, you are coming with us." And they hustled me down the hill, towards the river.

From the mob that followed close some one kicked me twice. A voice shouted, "Get a rope!" A smell of hate came from the heavily-breathing crowd. I could see myself being

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hustled along. It was dark, but I was detached from myself and saw the mob hustling me down the hill. I did not pity myself. I found myself saying a little prayer.

We came to a cross road, and the leaders hesitated. In the pause, my mind automatically functioned, professionally. 238 I heard myself say, "Boys, I am only a lawyer, trying a case for a living," and,—oh, the pity of it, I heard my lying tongue say, "I have no use for those damn socialists." Like Peter, I cursed. I denied my client and the truth. I cursed.

My cowardice and betrayal caught the sympathy of that cowardly mob. I was one of them, after all. The leader, gruffly scolded, "Why in hell did you threaten to boycott our town?" Thrice I lied that night. I said I didn't mean it.

Would I drop Gilbert's defense and leave town? I said I would, if they would take me to a livery where I could hire a car and drive over to the main line and catch the flyer for the city.

All during that night, on every station platform, I saw mobs surging, waiting for me in the dark. I was afraid and very tired. I wanted to get home.

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## CHAPTER X RECUPERATING

FOR some time after the World War, the farmers of the country, lacking the spur of necessity, suspended efforts to organize as a class for self-protection. Mean-while organized labor enjoyed the overhang of war prosperity and lost its zeal for political affiliation with agriculture. And so, with farmers, as a class, asleep, and with labor leaders indifferent, the moneyed interests by control of credits through the Federal Reserve Banks, deflated land values and multiplied the burden of mortgages. The enforced bankruptcy of thousands of farmers, resulting from this cold-blooded deflation, carried ruin to many local merchants and bankers and swelled the ranks of the unemployed. Hard times came on and stubbornly persisted.

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The general depression in values and foreclosure of mortgages, in the grain and live stock producing sections especially, broke many struggling, co-operative farm organizations. Even the gallant old Equity Co-operative Exchange with its thousands of loyal stockholders in Dakota, Minnesota, Iowa and elsewhere, with its line of elevators in the country and new terminal in St. Paul, found itself unable to liquidate its debts and at the same time finance its grain marketing operations. To avoid the hazards of bankruptcy, the directors of the company consented to the appointment by the state court in St. Paul of receivers to operate the business as a going concern and protect its creditors. The court appointed George C. Lambert and myself as such receivers and for some five and more years we wrestled with the difficulties of co-operative terminal marketing. Our trials and troubles were not all created by our competitors on the Chamber of Commerce, the regular "Trade," so-called—indifference, selfishness, suspicion and downright stupidity on the part of all but a few gallant leaders among the distressed farmers, made our work a heart-breaking business; stockholders, regardless of creditors, clamored for dividends; debtors pleaded poverty; creditors demanded pay; mortgage-holders threatened foreclosure; deflation on all sides multiplied debts. It was hard sledding. Sometimes we found our own stockholders patronizing our competitors and at the same time kicking because we could not pay them dividends; as one such said:

"Shure, co-operation is a fine thing, I believe in her. Oh shure. I'm Equity man, but you know, beesness is beesness. When do we get our interest?"

It was at times maddening, but nearly always just pathetic. By experience and observation, we learned that co-operatives, especially local, country associations, on whose good will and solvency terminal concerns so much depended, were lacking, as a rule, in several vital particulars. There was a lack of business efficiency; cheap, incompetent, sometimes corrupt managers, were employed; favoritism in grading and docking and occasionally gambling was indulged in an often improvident credit was extended and debts left unpaid.

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There was, also, among farmers, general lack of information on the broad subject of marketing, its cost and its influence on prices. Then there was, as well, as I have suggested, the complaisant disloyalty of many co-operators to their own institution. We were not theorists considering the wisdom underlying the abstract principal of co-operation. We were not philosophers. As receivers, we were grain merchants. The concern we operated was a co-operative corporation. It had assets and liabilities, but it also had, as we interpreted our duty, a principle to guide it. Our concern was, therefore, to conduct the business efficiently without doing violence to the co-operative principle in either theory or practice. We had to battle with our competitors behind a warlike front, at the same time dealing with our customers and stockholders in a spirit of brotherhood. In consequence of this double front, country elevator managers had to be taught the significance of a balance sheet. Competitors had to be taught that unfair practice in trade reacts against the one who indulges in it; co-operators had to be taught that the unforgivable sin against their fellow members was disloyalty to the organization. Farmers in mass had to learn from bitter experience, if not otherwise, 242 that their only chance for economic emancipation was in unity under powerful co-operative organization; that education, selfish information, hard boiled knowledge of the rights of food producers, and determination in the fields of planting, marketing and government, seemed to be the essential program; that the goal of agriculture was to secure by organization and law the power to demand prices for their produce, high enough to yield the cost of production and a reasonable return on investment. Obviously the job was too big in its economic and political aspects for us to handle as receivers of a struggling farmers' organization. We decided, with the concurrence of stockholders and creditors and under the judicial sanction of Judge John W. Boerner who appointed us, to reorganize and, if possible, enlarge the organization on broader lines.

A number of Equity stockholders lived in Iowa where the Farmers Educational and Co-operative Union of America, a national, fraternal order of farmers, commonly called *The Farmers Union*, had a large and devoted following, the leader and inspiration of which

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was Milo Reno, a farmer, educated as a Campbellite preacher and endowed with all the gifts of a Roman Tribune in the days of Cicero. Milo was ambitious to extend his Iowa domain northward to the Dakotas and beyond and urged successfully, that the work of reorganizing and enlarging the Equity as a co-operative terminal marketing association should be carried on in

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243 conjunction with a campaign for members in the Farmers Union as a fraternal and educational order of national outlook and aspirations. In the meanwhile, Townley, having become enamoured with what he called "a goddam duddle bug," a little device with which a certain man could, blindfolded, in a car, driven across the country, locate the presence of oil in quantity beneath the surface of the earth, had lost interest in the reorganization of the Non-partisan League into what he called the Producers Alliance and left that organization without a visible head, or any tangible assets except its official organ known as the Farm Market Guide and the good will of its editor, A. W. Ricker.

When I first met Ricker, we were both campaigning in Minnesota, for Henrick Shipstead, candidate on the Farmer-Labor ticket for the United States Senate. I was prejudiced against him, notwithstanding our mutual adherence to the same cause. "Ricker is a socialist," I had been told. "He was on the *Appeal to Reason* in its palmy days, as a dispenser of prejudice." He had a dogged way in argument. But his convictions were so sincere. He was so honest, even in his prejudices, that one could not for long resist his brilliant power of analysis, nor refuse to co-operate in a common cause. In fact, I myself, made the suggestion that he throw in his lot with the Farmers Union and the Equity and organize an educational campaign under the standards of the Farmers Union while we were at the same time building co-operative 244 grain and livestock marketing association and other business activities. To carry out this program, it was agreed by the leaders of the different groups to submit the matter of the amalgamation to a referendum of the members. When approval was had, we organized the Farmers Union Publishing Company to be owned and controlled by the grain, livestock, insurance and other co-operative

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business activities of farmers in the Northwest, with the understanding that the *Farmers Union Herald*, to be published by it as an official organ of the Farmers Union, should carry on a campaign of education on the subjects of co-operation and marketing.

Ricker was put in charge of the paper and largely directed the campaign of organization and education. As general counsel of the Farmers Union combination of business concerns in the Northwest states and as attorney for different state unions of the order, I had the responsibility of building the corporate structure of the business end to insure efficiency and of the fraternal end to serve the ideal of a genuine co-operative, but my work was largely of an advisory character. The heaviest job in the whole combination fell upon the shoulders of the man best qualified to carry it. Myron W. Thatcher, known to his associates as Bill Thatcher, never saw a farm or a farmer in his youth. When most farm lads of Bill's age were milking cows in the country, young Thatcher was thumping the piano in Chicago. Whether he played marbles or shook dice in the shadow of the 245 Board of Trade of that wicked city, I do not know, but in some manner, he seems to have, early in life, acquired a lasting complex of hostility to unfair dealing, on the market place.

In the farmers' struggle, under the leadership of George Loftus to establish a co-operative terminal market and under the leadership of A. C. Townley, to achieve a stronger political influence, fairer rates and larger profits—in the trying days of the Equity Co-operative Exchange and National Non-partisan League, sketched in preceding pages, Thatcher, city man and trained public accountant, was always found standing and generally standing alone on the side of the confused and harassed tillers of the soil. He defended the integrity of the co-operative business even when their appalling methods of bookkeeping drove him to distraction. He patiently strove to teach them business principles and efficiency. He had learned farming the hard way—backwards—from the market place back to the planting time. He felt the tragedy underlying the balance sheet of agriculture. As the one man in the group of farm leaders in the spring wheat section of the country combining in himself, executive ability, business training, organizing instinct, sympathy for farmers and zeal for co-operation, Thatcher was the logical choice of all groups as general manager of

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the Farmers Union Terminal Association and allied co-operatives. He organized creditors and stockholders of the Equity into the corporate structure of 246 the Farmers Union Terminal Association and that company acquired the assets and good will of the Equity on the payments of its debts. All of our Farmers Union business activities were built for service to members and patrons and not for profit and the promotion was carried forward in close conjunction with the educational work of the National Farmers Union as a fraternal order. The same men, Reno, Ricker, Thatcher, Talbott, Lambert, O'Connor, Egley, Greene and Moore and a host of others, were inextricably mixed in the activities of both fields; and out of the ferment the Farmers Union grew lustily in numbers and in power. In any event the possibility of a saving in the cost of marketing was demonstrated and, what was more important, the farmers learned to think and function as neighbors with a common cause. "Brother farmer" began to take on a real significance.

In the reign of President Coolidge, with its rampant industrial prosperity, little attention was given to the co-operative efforts of the grain producing farmers. Consumers, generally, as well as producers, were mildly interested in anything that promised to cut the cost of marketing, but gave little serious attention to the more vital concern of farm prices. True enough, Milo Reno had been preaching all over Iowa and A. W. Ricker had been writing editorials insisting that farmers were entitled to prices that would yield them the cost of production, including decent wages and a reasonable return in investment, but the general public would not listen and 247 the politicians would not heed; the voice of agriculture would not be heard, and was unheeded until the corn belt group met in Des Moines, Iowa, May 12 and 13, 1925, and threw down the gauntlet to the government.

This Corn Belt Federation, representing the major farm organizations and over one million farmers in 16 states, endorsed the equalization fee for absorbing crop surplus and controlling domestic prices, and the McNary-Haugen bill, pending in Congress and embodying the equalization fee principle. Under the militant leadership of William Hirth of Missouri, Frank Murphy of Minnesota and Milo Reno of Iowa, strong resolutions, condemning the legislative wrongs endured by agriculture as a class, were unanimously

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adopted and sent on to Washington. A legislative committee to represent the federation and present the farmer's cause to Congress was named. I was elected chairman of this committee and with it successfully advocated for the enactment by the Congress of the McNary-Haugen bill. We were also given an opportunity of expressing our views to President Coolidge. He received us in his office, standing silent and unresponsive as a microphone, while the passionate Hirth and the dramatic Murphy, as well as the more diffident members of the committee, John Trumble and Ralph Snyder of Kansas, William Settle of Indiana, George N. Peek and Frank Barton of Illinois, Thomas Cashman of Minnesota, H. C. Keeney of Nebraska, Milo Reno and Charles E. Hearst of Iowa, made, in vain, their 248 plea for equality for agriculture. The Vermont lawyer instinct ran true to form. He did not tell us he would veto the bill, but I felt sure that he intended to do so.

Failing health during the next session of Congress compelled me to relinquish the chairmanship of the legislative committee to the Vice Chairman, Frank W. Murphy, who with great brilliance and determination, through three sessions of Congress and one presidential campaign, led the fight of the farmers for a place at the national table.

The election of 1928 was to me a bitter disappointment. The defeat of Smith for President was as I at first saw it, a death blow to the Independent American farmer. My work had been in vain; my brothers on the land were sentenced to serve as peasants or quit the soil they loved. Nevertheless, I advised my clients as co-operatives, and my associates as reformers, to render unto President Hoover and his Farm Board loyal support and good will; and again I found myself dreaming, hoping, praying, that our civilization would not perish; that humanity would, sustained by happy men tilling their own soil, flower with increasing fragrance and beauty, unto

The End.